

## TITLE 14

### ZONING AND LAND USE CONTROL

#### CHAPTER

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#### CHAPTER 1

### MUNICIPAL PLANNING COMMISSION

#### SECTION

- 14-101. Creation and membership.  
 14-102. Organization, powers, duties, etc.

**14-101. Creation and membership.** Pursuant to the provisions of Tennessee Code Annotated, § 13-4-101 there is hereby created a municipal planning commission, hereinafter referred to as the planning commission. The planning commission shall consist of seven (7) members; two (2) of these shall be the mayor and another member of the town council selected by the town council; the other five (5) members shall be appointed by the mayor. All members of the planning commission shall serve as such without compensation. Except for the initial appointments, the terms of the five (5) members appointed by the mayor shall be for five (5) years each. The five (5) members first appointed shall be appointed for terms of one (1), two (2), three (3), four (4), and five (5) years respectively so that the term of one (1) member expires each year.

The terms of the mayor and the member selected by the town council shall run concurrently their terms of office. Any vacancy in an appointive membership shall be filled for the unexpired term by the mayor. (1979 Code, § 11-101)

**14-102. Organization, powers, duties, etc.** The planning commission shall be organized and shall carry out its powers, functions, and duties in accordance with all applicable provisions of Tennessee Code Annotated, title 13. (1979 Code, § 11-102)

## CHAPTER 2

### GENERAL ZONING PROVISIONS

#### SECTION

- 14-201. Purpose of zoning code.
- 14-202. Title.
- 14-203. Definitions.
- 14-204. Zoning district map.
- 14-205. Interpretation of district boundaries.
- 14-206. Application of district regulations.
- 14-207. Classification of districts.
- 14-208. Specific district regulations.

**14-201. Purpose of zoning code.** The zoning regulations and districts as herein set forth have been made in accordance with a comprehensive plan for the purpose of promoting the public health, safety, morals, convenience, order, prosperity, and general welfare of the community. They have been designed to lessen congestion in the streets, to secure safety from fires, floods, panic, and other dangers, to provide adequate light and air, to prevent the overcrowding of land, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. They have been made with reasonable consideration among other things as to the character of each district and its peculiar uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the town. (1979 Code, § 11-201)

**14-202. Title.** Chapters 2 through 15 of this title shall be known as the "Zoning Ordinance of Cumberland Gap, Tennessee," dated May 21, 1975. The zoning map shall be referred to as the "Zoning Map of Cumberland Gap, Tennessee," and it along with all explanatory matter thereon are hereby adopted and made a part of chapters 2 through 15 of this title. (1979 Code, § 11-202, as amended by Ord. #6-2018, Dec. 2018 *Ch 7-01-07-19*)

**14-203. Definitions.** For the purpose of chapters 2 through 15 of this title, and in order to carry out the provisions and intentions as set forth herein, certain words, terms, and phrases are to be used and interpreted as defined hereinafter. Words used in the present tense shall include the future tense; words in the singular number include the plural and words in the plural number include the singular; the word "person" includes a firm, partnership, or corporation as well as an individual; the term "shall" is always mandatory and not directory; and the word "may" is permissive. The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to used or occupied."

The following words, terms, and phrases are hereby defined as follows and shall be interpreted as such throughout chapters 2 through 15 of this title. The terms not herein defined shall have the meaning customarily assigned to them.

(1) "Access." The right to cross between public and private property, thereby permitting pedestrians and vehicles to enter and leave property.

(2) "Accessory building." A subordinate building, the use of which is incidental to that of a main building and located on the same lot therewith.

(3) "Accessory use." A use customarily incidental, appropriate, and subordinate to the principal use of land or buildings and located upon the same lot therewith.

(4) "Alley." A minor right-of-way, dedicated to the public use, which affords a secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which may be used for public utility purposes.

(5) "Area, building." The total areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces, and steps.

(6) "Automobile, wrecking, junk, or salvage yard." Any lot or place which is exposed to weather and upon which five (5) motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located, or found.

(7) "Building area of a lot." That portion of a lot bounded by the required rear yard, side yards, and the building setback line.

(8) "Building." Any structure intended for shelter, housing, or enclosure of persons, animals, or chattel, including lunch wagons, dining cars, and similar structures whether stationary or movable.

(9) "Building, main or principal." A building in which is conducted the principal use of the lot on which it is situated. In any residential district any dwelling shall be deemed to be a main building of the lot on which it is situated.

(10) "Building setback line." A line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided.

(11) "Customary home occupations." See § 14-1103.

(12) "Dwelling, multiple." A dwelling designed for occupancy by two (2) or more families living independently of each other.

(13) "Dwelling unit." An enclosed structure or building or portion thereof designed and utilized as an abode. The term shall not include mobile homes, trailers, tents, motels, or other structures designed or used primarily for transient residents.

(14) "Event and meeting facility." Any form of indoor or outdoor leisure activity, or other leisure pastime, open to the public including, but not limited to, meetings, concerts, dramas, movies, carnivals, fairs, festivals and such gatherings, whether held in an enclosed building and/or in the open or under a tent or portable temporary enclosure.

(15) "Flood." An overflow of lands not normally covered by water that results in significant adverse effects in the vicinity.

(16) "Floodway fringe areas." The channel of Gap Creek and the part of the adjoining floodplain designed to be the minimum area required for the passage of flood flow and in which no structures or filling shall be allowed.

(17) "Height of building." The vertical distance from the established average sidewalk grade, street grade, or finished grade at the building setback line, whichever is the higher, to the highest point of the building.

(18) "Junk yard or salvage yard." A lot, land, or structure, or part thereof, used primarily for the collecting, storage, and sale of waste paper, rags, scrap metal, or discarded material; or for the collecting, dismantling, storage, and salvaging of machinery or vehicles not in running condition, or for the sale of part thereof.

(19) "Loading and unloading space." An area ten feet by forty feet (10' x 40') with a fourteen foot (14') height clearance providing for the standing, loading, or unloading of a truck or other vehicles.

(20) "Lot." A piece, parcel, or plot of land in one (1) ownership, which may include one (1) or more lots of record, occupied or to be occupied by one (1) principal building and its accessory buildings including the open spaces required under chapters 2 through 15 of this title.

(21) "Lot, lines." The boundary dividing a given lot from the street, an alley, or adjacent lots.

(22) "Lot of record." A lot which is part of a subdivision recorded in the office of the county registrar of deeds, or a lot described by metes and bounds, the description of which has been recorded in the office of the county registrar of deeds prior to the effective date of the provisions of chapters 2 through 15 of this title.

(23) "Mobile home or trailer." An enclosed structure intended for year-round occupancy as a residential unit and designed and constructed in such a manner as to facilitate movement from one location to another. Essential elements of the design are steel beams parallel to the long axis of the unit which support the weight load of the unit; axle(s) or the capability of affixing axle(s) to the steel beams of the unit for the purpose of transporting the unit; and trailer hitch or capability of affixing a trailer hitch to the unit for the purpose of transporting the unit.

(24) "Nonconforming use." A building, structure, or use of land existing at the time of enactment of the provisions of chapters 2 through 15 of this title or subsequent amendment thereto which does not conform to the regulations of the district in which it is located.

(25) "Open space." An area on the same lot with a main building which is open, unoccupied, and unobstructed by structures from the ground to the sky except as otherwise provided in chapters 2 through 15 of this title.

(26) "Noxious matter." Material (in gaseous, liquid, solid, particulate, or any other form) which is capable of causing injury to living organisms,

chemical reactions, or detrimental effects upon the social, economic, or psychological well-being of individuals.

(27) "Parking lot." An off-street facility including parking spaces along with adequate provisions for drives and aisles for maneuvering and getting access, and for entrance and exit.

(28) "Parking space." An off-street space available for parking one motor vehicle and having an area of not less than two hundred (200) square feet exclusive of passageways and driveways giving access thereto, and having access to a street or alley.

(29) "Principal use." The specific primary purpose for which land or a building is used.

(30) "Sign, billboard, or other advertising device." Any structure or part thereof or device attached thereto or represented thereon, which shall display or include any letter, words, model, banner, flag, pennant, insignia, or representation used as, or which is in the nature of an announcement, direction, or advertisement. The word "sign" includes the word "billboard" or any other type of advertising device, but does not include the flag, pennant, or insignia of any nation, state, city, or other political unit.

(31) "Story." That portion of a building included between the upper surface of any floor and the upper surface of the floor next above; or any portion of a building included between the topmost floor and the roof which is used for human occupancy or in which the floor area with eight feet (8') or more of head clearance equals fifty percent (50%) or more of floor area of the next story below. Provided it is not used as a dwelling unit, a top floor in which the floor area with eight feet (8') or more of head clearance equals less than fifty percent (50%) of the floor area of the story next below shall be a "half-story." A basement shall be considered as a story if its ceiling is more than five feet (5') above the level from which the "height of building" is measured or if it is used for residential purposes.

(32) "Street." A public or private thoroughfare which affords the principal means of access to abutting property.

(33) "Structure." Any combination of materials, including buildings, constructed or erected, the use of which required location on the ground or attachment to anything having location on the ground and including among other things, signs, billboards, and fences.

(34) "Swimming pools." An outdoor swimming pool shall be any pool or open tank not located within a completely enclosed building and containing or normally capable of containing water to a depth at any point greater than one and one-half feet (1 1/2').

(35) "Travel trailer." A vehicular portable structure designed as a temporary dwelling for travel, recreation, and vacation uses.

(36) "Travel trailer park." A plot of land designed and equipped to accommodate travel trailers for short periods of time.

(37) "Use." The purpose for which land or a building or other structure is designed, arranged, or intended, or for which it is or may be occupied or maintained.

(38) "Yard." A yard is an open space on the same lot with a principal building, open, unoccupied, and unobstructed by buildings from the ground to the sky except as otherwise provided in chapters 2 through 15 of this title, provided that accessory buildings may be located in a rear yard.

(39) "Yard, front." The yard extending across the entire width of the lot between the nearest part of the principal building, including covered porches, and the front lot line.

(40) "Yard, rear." The yard extending across the entire width of the lot between the nearest part of the principal building, including covered porches, and the rear lot line.

(41) "Side yard." A yard extending along the side lot line from the front yard to the rear yard, and lying between the side lot line and the nearest part of the principal building, including covered porches, and attached carports. (1979 Code, § 11-203, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*, and replaced by Ord. #4-021, Aug. 2021 *Ch9\_12-05-22*)

**14-204. Zoning district map.** The location and boundaries of the zoning districts established by chapters 2 through 15 of this title are bounded and defined as shown on the map entitled Zoning Map of Cumberland Gap. The zoning map or zoning map amendment(s) shall be dated with the effective date of the ordinance that adopts the zoning map or zoning map amendment(s). Certified prints of the adopted zoning map or zoning map amendment shall be maintained in the City Hall of Cumberland Gap and shall be available for inspection by the public at all reasonable times, as long as chapters 2 through 15 of this title remain in effect. (1979 Code, § 11-204 as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-205. Interpretation of district boundaries.** Unless otherwise noted, boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed as following such center lines. Boundaries which are indicated as approximately following platted lot lines shall be construed as following lot lines. Boundaries which are indicated as approximately following city limits shall be construed as following such city limits. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks. Boundaries which are indicated as approximately following the center lines of streams, rivers, and lakes, shall be construed to follow such center lines.

Distances not specifically indicated on the official zoning map shall be determined by the scale of the map. Questions concerning the exact locations of district boundaries shall be resolved by the board of zoning appeals.

Where a district boundary divides a lot existing at the time the provisions of chapters 2 through 15 of this title take effect and the major portion of said lot is in the less restricted district, the regulations relative to that district may extend as well to such portions of said lot as are not more than twenty (20) feet within the more restricted district. (1979 Code, § 11-205, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-206. Application of district regulations.** The regulations set by chapters 2 through 15 of this title within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located. No building or other structure shall hereafter be erected or altered to exceed the height or bulk; to accommodate or house greater number of families; to occupy a greater percentage of lot area; to have narrower or smaller rear yards, front yards, side yards, or other open space; than herein required.

No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with chapters 2 through 15 of this title shall be included as part of a yard, open space, or off-street parking and loading space similarly required for any other building. No yard or lot existing at the time of passage of the provisions of chapters 2 through 15 of this title shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this code shall meet at least the minimum requirements established by chapters 2 through 15 of this title. (1979 Code, § 11-206, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-207. Classification of districts.** For the purpose of chapters 2 through 15 of this title, the Town of Cumberland Gap, Tennessee, is hereby divided into seven (7) zoning districts as follows:

<u>Zoning Districts</u>	<u>District Abbreviations</u>
Low density residential	R-1
Medium density residential	R-2
Central business district	C-1
Central business district alpha	C-1A
Highway business district	C-2
Highway business district	C-3
Highway business district	C-4
Historic district	H-1
Floodplain district	FP-1



(1979 Code, § 11-207, as amended by Ord. #0071, Nov. 1983, and Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*, and replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05-22*)

**14-208. Specific district regulations.** The regulations of chapters 2 through 15 of this title shall apply in the zoning districts established in § 14-207. (1979 Code, § 11-208, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

## CHAPTER 3

### R-1 DISTRICTS

#### SECTION

- 14-301. R-1 Low-Density Residential District.
- 14-302. Permitted uses and structures.
- 14-303. Special exceptions.
- 14-304. Prohibited uses and structures.
- 14-305. Height requirements.
- 14-306. Site development standards for required yards.
- 14-307. Parking, storage, and use of automobiles, major recreational equipment, or trucks.
- 14-308. Location of accessory buildings.

**14-301. R-1 Low-Density Residential District.** The Low-Density Residential District, R-1, is intended to provide areas which are suitable for low-density, single-family residential development. The following regulations shall apply in the low density residential district as defined by the zoning map of Cumberland Gap, Tennessee. (1979 Code, § 11-401)

**14-302. Permitted uses and structures.** The following uses and structures are permitted:

- (1) Detached single-family dwellings.
- (2) Accessory buildings or uses customarily incidental to single-family dwellings.
- (3) Signs as regulated in § 14-1109.
- (4) Individual mobile homes on a single lot. (1979 Code, § 11-402, as amended by Ord. #6-2018, Dec. 2018 *Ch 7\_01-07-19*)

**14-303. Special exceptions.** The following uses may be permitted on review by the board of zoning appeals according to § 14-1201:

- (1) Institutions (including churches, schools offering general education courses, and public libraries).
- (2) Horticulture, including forestry, not involving advertising, display, or public sale of products on the premises.
- (3) Accessory buildings or uses customarily incidental to any aforementioned uses.
- (4) Public parks and public recreation areas.
- (5) Cemeteries as regulated in § 14-1104.
- (6) Customary home occupations as regulated in § 14-1103. (1979 Code, § 11-403, as amended by Ord. #6-2018, Dec. 2018 *Ch 7\_01-07-19*)

**14-304. Prohibited uses and structures.** Any other use not specifically permitted or permissible on review in this R-1, Low-Density Residential Zoning District is prohibited. (1979 Code, § 11-404)

**14-305. Height requirements.** No building shall exceed two (2) stories or thirty (30) feet in height, except as provided in § 14-1203 of this code. (1979 Code, § 11-406, as renumbered by Ord. #17-2015, Jan. 2016, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-306. Site development standards for required yards.** The required yards of all uses shall be made fertile; planted with grass, shrubs, and/or trees or otherwise landscaped; and maintained in good order. (1979 Code, § 11-407, as renumbered by Ord. #17-2015, Jan. 2016)

**14-307. Parking, storage, and use of automobiles, major recreational equipment, or trucks.** Off-street passenger automobile parking space as required in § 14-1108 of this code shall be provided. No vehicle or trailer of any kind or type without current license plates shall be parked or stored on any lot other than in a completely enclosed building. No major recreational equipment (including boat and boat trailer, travel trailers, partial travel trailer units, and the like, and cases or boxes used for transporting such, whether occupied by such equipment or not) shall be parked or stored on any lot except in a carport or enclosed building or behind the nearest portion of a building to a street, except for a temporary basis. No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.

No truck of a rated capacity of greater than one (1) ton nor any heavy equipment may be parked on any lot or in the public right-of-way adjacent to any lot overnight nor stored or parked while loading or unloading for periods in excess of twenty-four (24) hours except in an enclosed building. (1979 Code, § 11-1108, as renumbered by Ord. #17-2015, Jan. 2016, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-308. Location of accessory buildings.** (1) No accessory building shall be erected in any required front or side yard. Accessory buildings shall not cover more than thirty (30) percent of any required rear yard.

(2) Accessory buildings on corner lots shall conform with front yard setbacks for both intersecting streets. (1979 Code, § 11-409, as renumbered by Ord. #17-2015, Jan. 2016)

## CHAPTER 4

### R-2 DISTRICTS

#### SECTION

- 14-401. R-2 Medium-Density Residential District.
- 14-402. Permitted uses and structures.
- 14-403. Special exceptions.
- 14-404. Prohibited uses and structures.
- 14-405. Area regulations.
- 14-406. Height requirement.
- 14-407. Site development standards for required yards.
- 14-408. Parking, storage, and use of automobiles, major recreational equipment, or trucks.
- 14-409. Location of accessory buildings.

**14-401. R-2 Medium-Density Residential District.** The Medium-Density Residential District, R-2, is intended to preserve the existing residential areas of Cumberland Gap along with providing an area for higher density development than available in the R-1 district. The following regulations shall apply in the Medium-Density Residential District as defined on the "Zoning Map for Cumberland Gap, Tennessee." (1979 Code, § 11-501)

**14-402. Permitted uses and structures.** The following uses and structures are permitted:

- (1) Detached single-family dwellings.
- (2) Accessory buildings or uses customarily incidental to single-family dwellings.
- (3) Multi-family dwellings provided, however, that such dwellings are served by a public water supply and sanitary sewer system as approved by the Tennessee Department of Public Health.
- (4) Signs as regulated in § 14-1109. (1979 Code, § 11-502, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-403. Special exceptions.** The following uses may be permitted on review by the board of zoning appeals according to § 14-1401:

- (1) Institutions (including churches, schools offering general education courses, and public libraries).
- (2) Municipal, county, state, or federal uses, public utilities, except storage and warehousing areas, and public parks.
- (3) Customary home occupations, as regulated in § 14-1103. (1979 Code, § 11-503, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-404. Prohibited uses and structures.** Any other use not specifically permitted or permissible on appeal in the R- 2, residential district is prohibited. (1979 Code, § 11-504)

**14-405. Area regulations.** All uses permitted in the medium density residential district, R-2, shall comply with the following requirements:

- (1) Minimum lot area . . . . 5,000 square feet.
- (2) Minimum lot width at building setback line . . 50 feet.
- (3) Minimum depth of front yard . . . . . 30 feet.
- (4) Minimum depth of rear yard . . . . .20 feet.
- (5) Minimum width of side yard:
  - 1 story building . . . . . 10 feet per side.
  - 2 story building . . . . . 10 feet per side.
  - 3 story building . . . . . 10 feet per side.
- (6) Maximum building area . . . 50 percent of the total lot area. (1979 Code, § 11-505, as amended by Ord. #1-2004, Jan. 2004)

**14-406. Height requirement.** No building shall exceed three (3) stories or forty (40) feet in height except as provided in § 14-1203 of this code. (1979 Code, § 11-506, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-407. Site development standards for required yards.** The required yards of all uses shall be made fertile; planted with grass, shrubs, and/or trees or otherwise landscaped; and maintained in good order. (1979 Code, § 11-507)

**14-408. Parking, storage, and use of automobiles, major recreational equipment, or trucks.** Off-street passenger automobile parking space as required in § 14-1108 of this code shall be provided.

No vehicle or trailer of any kind or type without current license plates shall be parked or stored on any lot other than in a completely enclosed building.

No major recreational equipment (including boats and boat trailers, travel trailers, partial travel trailer units, and the like, and cases or boxes used for transporting such, whether occupied by such equipment or not) shall be parked or stored on any lot except in a carport or enclosed building or behind the nearest portion of a building to a street, except for a temporary basis. No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.

No truck of a rated capacity of greater than one (1) ton nor any heavy equipment may be parked on any lot or in the public right-of-way adjacent to any lot overnight nor stored or parked while loading or unloading for periods in

excess of twenty-four (24) hours except in an enclosed building. (1979 Code, § 11-508, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-409. Location of accessory buildings.** (1) No accessory building shall be erected in any required front or side yard. Accessory buildings shall not cover more than thirty (30) percent of any required rear yard.

(2) Accessory buildings on corner lots shall conform with front yard setbacks for both intersecting streets. (1979 Code, § 11-509)

## CHAPTER 5

### C-1 DISTRICTS

#### SECTION

- 14-501. C-1 Central Business District.
- 14-502. Uses permitted.
- 14-503. Special exceptions.
- 14-504. Uses prohibited.
- 14-505. Area regulations.
- 14-506. Height requirements.
- 14-507. Parking requirements.

**14-501. C-1 Central Business District.** The C-1 Central Business District is established in order to protect and improve the main shopping areas of Cumberland Gap and to permit concentrated development of offices, shopping facilities, and general commercial activities while preserving and protecting existing residential buildings located within the district. Within the C-1 Central Business District, as shown on the zoning map of Cumberland Gap Tennessee, the following regulations shall apply. (1979 Code, § 11-601, as replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05-22*)

**14-502. Uses permitted.** The following uses are permitted:

- (1) Retail stores and shops.
- (2) Grocery and drug stores, and meat and fruit markets.
- (3) Indoor and outdoor restaurants.
- (4) Finance, insurance, and real estate establishments.
- (5) Theatres, excluding drive-ins.
- (6) Professional and government services, excluding hospitals.
- (7) Branch laundry and dry cleaning establishments.
- (8) Retail stores and shops and finance, insurance and real estate establishments and professional services, with residential above ground floor.
- (9) Signs as regulated in § 14-1109. (1979 Code, § 11-602, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*, as replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05-22*)

**14-503. Special exceptions.** The following uses may be permitted on review by the board of zoning appeals according to § 14-1401:

- (1) The manufacturing of craftworks on the premises of and in conjunction with a retail store or shop. The square footage of floor space used for manufacturing and storage cannot be more than triple the amount of space used for retail sales.
- (2) Museums and art galleries.

(3) Detached single-family dwellings and accessory buildings or uses customarily incidental to detached single-family dwelling.

(4) Event and meeting facility.

(5) Any use which, in the opinion of the board of zoning appeals, is of the same general character as the above permitted uses. (1979 Code, § 11-603, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*, as replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05-22*)

**14-504. Uses prohibited.** All uses not specifically permitted or allowable as special exceptions are prohibited. (1979 Code, § 11-604, as replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05-22*)

**14-505. Area regulations.** There are no specific front, side, or rear yard requirements or lot coverage requirements except as needed to provide off-street loading and unloading.

Detached single-family residential buildings and accessory buildings customarily incidental to detached single-family residential building shall comply with the following requirements:

- |     |  |                                      |
|-----|--|--------------------------------------|
| (1) | Minimum lot area                           | 5,000 square feet.                   |
| (2) | Minimum lot width at building setback line | 50 feet.                             |
| (3) | Minimum depth of front yard                | 30 feet.                             |
| (4) | Minimum depth of rear yard                 | 20 feet.                             |
| (5) | Minimum width of side yard                 | 10 feet.                             |
| (6) | Maximum building area                      | 50 percent of<br>the total lot area. |

Event and meeting facilities shall comply with the following requirements:

- |     |  |                                      |
|-----|--|--------------------------------------|
| (1) | Minimum lot area                           | 20,000 square feet.                  |
| (2) | Minimum lot width at building setback line | 100 feet.                            |
| (3) | Minimum depth of front yard                | 30 feet.                             |
| (4) | Minimum depth of rear yard                 | 30 feet.                             |
| (5) | Minimum width of side yard                 | 25 feet.                             |
| (6) | Maximum building area                      | 50 percent of<br>the total lot area. |

Commercial buildings may be built next to a common lot line if the lot line walls have a fire resistance rating equal to that required by the Standard Building Code. In addition, commercial buildings and structures may be built next to the rear lot line provided a public alley-way exists at the side or rear of the property and that requirements set forth in § 14-1105 of this code are met. (1979 Code, § 11-605, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*, and replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05-22*)



**14-506. Height requirements.** No building shall exceed three (3) stories or forty feet (40') in height, except as provided in § 14-1203 of this code. (1979 Code, § 11-606, as replaced by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*, and Ord. #4-2021, Aug. 2021 *Ch9\_12-05-22*)

**14-507. Parking requirements.** As regulated in § 14-1108. (1979 Code, § 11-607, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*, and replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05-22*)

## CHAPTER 6

### C-1A DISTRICTS

#### SECTION

- 14-601. C-1A Central Business District Alpha.
- 14-602. Uses permitted.
- 14-603. Special exceptions.
- 14-604. Uses prohibited.
- 14-605. Area regulations.
- 14-606. Height requirements.
- 14-607. Parking requirements.
- 14-608. Boundaries.

**14-601. C-1A Central Business District Alpha.** The C-1A Central Business District Alpha is established within the C-1 district to provide a central location in town for restaurants that are permitted for on premise consumption of alcoholic beverages while preserving and protecting existing residential buildings located within the district. The area is defined as the addresses on Colwyn Avenue with the numbers 400 through 699 with the front of the lot onto Colwyn Avenue. Since the C-1A District is within the C-1 Central Business District, as shown on the zoning map of Cumberland Gap Tennessee, the following regulations shall apply and are the same as those in chapter 5 of this title. (1979 Code, § 11-701, as replaced by Ord. #5-2017, July 2017 *Ch7\_01-07-19*, and Ord. #4-2021, Aug. 2021 *Ch9\_12-05\_22*)

**14-602. Uses permitted.** The following uses are permitted:

- (1) Retail stores and shops.
- (2) Grocery and drug stores, and meat and fruit markets.
- (3) Indoor and outdoor restaurants.
- (4) Finance, insurance, and real estate establishments.
- (5) Theatres, excluding drive-ins.
- (6) Professional and government services, excluding hospitals.
- (7) Branch laundry and dry cleaning establishments.
- (8) Retail stores and shops and finance, insurance and real estate establishments and professional services, with residential above ground floor.
- (9) Signs as regulated in § 14-1109. (1979 Code, § 11-702, as replaced by Ord. #5-2017, July 2017 *Ch7\_01-07-19*, amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*, and replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05\_22*)

**14-603. Special exceptions.** The following uses may be permitted on review by the board of zoning appeals according to § 14-1401:

- (1) The manufacturing of craftworks on the premises of and in conjunction with a retail store or shop. The square footage of floor space used for

manufacturing and storage cannot be more than triple the amount of space used for retail sales.

- (2) Museums and art galleries.
- (3) Detached single-family dwellings and accessory buildings or uses customarily incidental to detached single-family dwelling.
- (4) Event and meeting facility.
- (5) Any use which, in the opinion of the board of zoning appeals, is of the same general character as the above permitted uses. (1979 Code, § 11-703, as replaced by Ord. #5-2017, July 2017 **Ch7\_01-07-19**, amended by Ord. #6-2018, Dec. 2018 **Ch7\_01-07-19**, and replaced by Ord. #4-2021, Aug. 2021 **Ch9\_12-05\_22**)

**14-604. Uses prohibited.** All uses not specifically permitted or allowable as special exceptions are prohibited. (1979 Code, § 11-704, as replaced by Ord. #5-2017, July 2017 **Ch7\_01-07-19**, and Ord. #4-2021, Aug. 2021 **Ch9\_12-05\_22**)

**14-605. Area regulations.** There are no specific front, side, or rear yard requirements or lot coverage requirements except as needed to provide off-street loading and unloading.

Detached single-family residential buildings and accessory buildings customarily incidental to detached single-family residential building shall comply with the following requirements:

- (1) Minimum lot area 5,000 square feet.
- (2) Minimum lot width at building setback line 50 feet.
- (3) Minimum depth of front yard 30 feet.
- (4) Minimum depth of rear yard 20 feet.
- (5) Minimum width of side yard 10 feet.
- (6) Maximum building area 50 percent of the total lot area.

Event and meeting facilities shall comply with the following requirements:

- (1) Minimum lot area 20,000 square feet.
- (2) Minimum lot width at building setback line 100 feet.
- (3) Minimum depth of front yard 30 feet.
- (4) Minimum depth of rear yard 30 feet.
- (5) Minimum width of side yard 25 feet.
- (6) Maximum building area 50 percent of the total lot area.

Commercial buildings may be built next to a common lot line if the lot line walls have a fire resistance rating equal to that required by the standard building

code. In addition, commercial buildings and structures may be built next to the rear lot line provided a public alley-way exists at the side or rear of the property and that requirements set forth in § 14-1105 of this code are met.

(1979 Code, § 11-705, as replaced by Ord. #5-2017, July 2017 *Ch7\_01-07-19*, and Ord. #4-2021, Aug. 2021 *Ch9\_12-05\_22*)

**14-606. Height requirements.** No building shall exceed three (3) stories or forty feet (40') in height, except as provided in § 14-1203 of this code. (1979 Code, § 11-706, replaced by Ord. #5-2017, July 2017 *Ch7\_01-07-19*, amended by Ord. #6-2018, Jan. 2019 *Ch7\_01-07-19*, and replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05\_22*)

**14-607. Parking requirements.** As regulated in § 14-1108. (as added by Ord. #5-2017, July 2017 *Ch7\_01-07-19*, and replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05\_22*)

**14-608. Boundaries.** The boundaries of the zone shall be designated as outlined on the zoning map attached and on display at the Town Hall of Cumberland Gap, Tennessee. (as added by Ord. #5-2017, July 2017 *Ch7\_01-07-19*, and replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05\_22*)

## CHAPTER 7

### C-2 DISTRICTS

#### SECTION

14-701. C-2 Highway Business District.

14-702. Permitted uses and structures.

14-703. Special exceptions.

14-704. Prohibited uses and structures.

14-705. Area regulations.

14-706. Height requirements.

**14-701. C-2 Highway Business District.** The Highway Business district, C-2, is established to provide areas in which the principal use of land is devoted to highway oriented commercial uses. The following regulations are designed to preserve the traffic carrying capacity of streets in the highway commercial district and to provide for necessary off-street parking and loading. The following regulations shall apply in the highway business district, C-2, as defined on the zoning map of Cumberland Gap, Tennessee. (1979 Code, § 11-701)

**14-702. Permitted uses and structures.** The following uses and structures are permitted:

- (1) Hotels, motels, indoor restaurants, and tourist shops.
- (2) Gasoline service stations as regulated in § 14-1110.
- (3) Auto sales, repair, and wash services excluding automobile wrecking, junk, or salvage operations.
- (4) Signs as regulated in § 14-1109. (1979 Code, § 11-702)

**14-703. Special exceptions.** The following uses may be permitted on review by the board of zoning appeals according to § 14-1401:

Any business or service which, in the opinion of the board of zoning appeals, is of the same general character as the above permitted uses, and subject to such conditions and safeguards as the board of zoning appeals may specify to preserve the character of the area. (1979 Code, § 11-703)

**14-704. Prohibited uses and structures.** All uses not specifically permitted or allowable as special exceptions are prohibited. (1979 Code, § 11-704)

**14-705. Area regulations.** All uses shall comply with the following requirements:

- (1) Minimum lot width at building line . . . 50 feet.
- (2) Minimum depth of front yard . . . . . 35 feet.

- (3) Minimum depth of rear yard. . . . . 20 feet.
- (4) Minimum width of side yards:
  - 1 story building . . . . . 10 feet each.
  - 2 story building . . . . . 15 feet each.
  - 3 story building . . . . . 20 feet each.
  - 4 story building . . . . . 20 feet each.

However, commercial buildings may be built next to a common lot line, if the lot line walls have a fire resistance rating equal to that required by the Standard Building Code. (1979 Code, § 11-705)

**14-706. Height requirements.** No building shall exceed four stories or fifty (50) feet in height, except as provided in § 14-1203 of this code. (1979 Code, § 11-706)

## CHAPTER 8

### C-3 DISTRICTS

#### SECTION

- 14-801. C-3 Highway Business District.
- 14-802. Permitted uses and structures.
- 14-803. Special exceptions.
- 14-804. Prohibited uses and structures.
- 14-805. Area regulations.
- 14-806. Height requirements.
- 14-807. Boundaries.

**14-801. C-3 Highway Business District.** The highway business district, C-3 is established to provide areas along U.S. Highway 58 and located within the Town of Cumberland Gap, in which are located more than three hundred feet (300') from an establishment that is licensed to sell beer liquor or any other type of alcoholic beverage and which the principal use of land is devoted to highway oriented commercial businesses. The following regulations are designed to preserve the traffic carrying capacity of streets along the U.S. Highway 58 Commercial District and to provide for necessary off street parking and loading and to preserve for the safety of ingress and egress from U.S. Highway 58 into the established businesses. The following regulations shall apply in the highway business district, C-3, as defined on the zoning map of Cumberland Gap, Tennessee. (as added by Ord. #9-2005, Oct. 2005, as replaced by Ord. #10-2013, Dec. 2013)

**14-802. Permitted uses and structures.** The following uses and structures are permitted:

- (1) Hotels, motels, indoor restaurants, and tourist shops.
- (2) Gasoline service stations as regulated in § 14-1110.
- (3) Auto sales, repair and wash services excluding automobile wrecking, junk or salvage operations.
- (4) Signs as regulated in § 14-1109.
- (5) Adult book store establishments as regulated in § 9-501 et seq.
- (6) Any clinic, treatment center, business or any other type of establishment that derives fifty percent (50%) or more of its gross revenues from the treatment of drug addiction utilizing the distribution of Methadone.
- (7) Any clinic, treatment center, business or any other type of establishment that derives fifty percent (50%) or more of its gross revenues from the treatment of pain. Due to the administration of drugs and is commonly known as pain management or drug rehabilitation clinics or facilities. (as added by Ord. #9-2005, Oct. 2005, and replaced by Ord. #10-2013, Dec. 2013, and

amended by Ord. #2-2017, June 2017 *Ch7\_01-07-19*, and Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-803. Special exceptions.** The following uses may be permitted on review by the board of zoning appeals according to § 14-1401: Any business or service which, in the opinion of the board of zoning appeals, is the same general character as the above permitted uses, and subject to such conditions and safeguards as the board of zoning appeals may specify to preserve the character of the area. (as added by Ord. #9-2005, Oct. 2005, as replaced by Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-804. Prohibited uses and structures.** All uses not specifically permitted or allowable as special exceptions are prohibited. (as added by Ord. #9-2005, Oct. 2005, as replaced by Ord. #10-2013, Dec. 2013)

**14-805. Area regulations.** All uses shall comply with the following requirements:

- (1) Minimum lot width at building line fifty feet (50').
- (2) Minimum depth of front yard thirty-five feet (35').
- (3) Minimum depth of rear yard twenty feet (20').
- (4) Minimum width of side yards;
  - 1 Story building..... ten feet (10') each.
  - 2 Story building..... fifteen feet (15')each.
  - 3 Story building..... twenty feet (20') each.
  - 4 Story building..... twenty feet (20') each.

However, commercial buildings may be built next to the common lot line, if the lot line walls have a fire resistance rating equal to that required by the standard building code. (as added by Ord. #9-2005, Oct. 2005, and replaced by Ord. #10-2013, Dec. 2013)

**14-806. Height requirements.** No building shall exceed four (4) stories of fifty feet (50') in height, except as provided in § 14-1203 of this code. (as added by Ord. #9-2005, Oct. 2005, replaced by Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-807. Boundaries.** The boundaries of the zone shall be designated as outlined on the zoning map attached and on display at the Town Hall of Cumberland Gap, Tennessee. (as added by Ord. #10-2013, Dec. 2013)



## CHAPTER 9

### C-4 HIGHWAY BUSINESS DISTRICT

#### SECTION

- 14-901. C-4 Highway business district.
- 14-902. Permitted uses and structures.
- 14-903. Special exceptions.
- 14-904. Prohibited uses and structures.
- 14-905. Area regulations.
- 14-906. Height requirements.
- 14-907. Boundaries.

**14-901. C-4 Highway business district.** The highway business district, C-4 is established to provide areas along U. S. Highway 58 and located within the Town of Cumberland Gap, in which are located more than three hundred feet (300') from an establishment that is licensed to sell beer liquor or any other type of alcoholic beverage and which the principal use of land is devoted to highway oriented commercial businesses. The following regulations are designed to preserve the traffic carrying capacity of streets along the U. S. Highway 58 commercial district and to provide for necessary off street parking and loading and to preserve for the safety of ingress and egress from U. S. Highway 58 into the established businesses. The following regulations shall apply in the highway business district, C-4, as defined on the zoning map of Cumberland Gap, Tennessee. (as added by Ord. #10-2013, Dec. 2013)

**14-902. Permitted uses and structures.** The following uses and structures are permitted:

- (1) Hotels, motels, indoor restaurants, and tourist shops.
- (2) Gasoline service stations as regulated in § 14-1110.
- (3) Auto sales, repair and was services excluding automobile wrecking, junk or salvage operations.
- (4) Signs as regulated in § 14-1109.
- (5) Any establishment which sells alcohol and or liquor that is designated as a private club pursuant to the laws of the State of Tennessee. (as added by Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-903. Special exceptions.** The following uses may be permitted on review by the board of zoning appeals according to § 14-1401: Any business or service which, in the opinion of the board of zoning appeals, is the same general character as the above permitted uses, and subject to such conditions and

safeguards as the board of zoning appeals may specify to preserve the character of the area. (as added by Ord. #10-2013, Dec. 2013)

**14-904. Prohibited uses and structures.** All uses not specifically permitted or allowable as special exceptions are prohibited. (as added by Ord. #10-2013, Dec. 2013)

**14-905. Area regulations.** All uses shall comply with the following requirements:

- (1) Minimum lot width at building line fifty feet (50').
- (2) Minimum depth of front yard thirty-five feet (35').
- (3) Minimum depth of rear yard twenty feet (20').
- (4) Minimum width of side yards;
  - 1 Story building..... ten feet (10')
  - 2 Story building..... fifteen feet (15')
  - 3 Story building..... twenty feet (20')
  - 4 Story building..... twenty feet (20')

However, commercial buildings may be built next to the common lot line, if the lot line walls have a fire resistance rating equal to that required by the standard building code. (as added by Ord. #10-2013, Dec. 2013)

**14-906. Height requirements.** No building should shall exceed four (4) stories of fifty feet (50') in height, except as provided in § 14-1203 of this code. (as added by Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-907. Boundaries.** The boundaries of the zone shall be designated as outlined on the zoning map attached and on display at the Town Hall of Cumberland Gap, Tennessee. (as added by Ord. #10-2013, Dec. 2013)

## CHAPTER 10

### **H-1 DISTRICT AND FP-1 FLOODPLAIN DISTRICT**

#### **SECTION**

14-1001. H-1 Historical District.

14-1002. FP-1 Floodplain District

**14-1001. H-1 Historical District.** The H-1 Historical District is intended to preserve historical buildings and sites in the Town of Cumberland Gap. The requirements of the district are designed to protect and preserve historic and/or architectural value; provide protection from uses that would lessen the significance of the surrounding uses; create an aesthetic atmosphere; stabilize property values; enhance civic beauty; strengthen the economy; and promote education and cultural heritage of the present and future citizens of the Town of Cumberland Gap. In order to achieve the intent of the H-1 Historical District, as shown on the zoning map, the following regulations shall apply:

(1) No building permit for construction, internal and/or external repair, moving, or demolition to be carried on within the district shall be issued by the building inspector until it is submitted to and receives approval in writing from the Historical Zoning Commission. The historical zoning commission may, however, prepare a listing of prior approvals permitted in the Historical District.

(2) No signs, billboards, and/or other advertising structures shall be permitted to be erected in the H-1 Historical District unless prior approval is granted by the historical zoning commission.

The powers, duties, jurisdiction, and review criteria for the historical zoning commission are found in chapter 15 of this title. (1979 Code, § 11-801, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #17-2015, Jan. 2016 and Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1002. FP-1 Floodplain District.** The intent of the floodplain district is to require restrictions upon the use of lands which lie in floodways and floodplains within the town and to meet federal regulations as developed to implement the Flood Disaster Protection Act of 1973 as amended; thereby protecting persons, property and the community from dangers arising from periodic flooding. The floodplain district is shown on the Cumberland Gap Zoning Map which is a part of this ordinance. The floodplain district is an overlay district. In order to achieve the intent of this district the following regulations shall be required in addition or in lieu of the underlying district regulations.

(1) Within designated floodways, no permanent structures shall be allowed.

(2) Within flood fringe areas uses permitted in the underlying zoning district shall be allowed subject to the conditions established in the regulations governing the National Flood Disaster Act of 1973 as amended. (Ord. #0071, Nov. 1983, as renumbered by Ord. #9-2005, Oct. 2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

## CHAPTER 11

### SUPPLEMENTARY PROVISIONS APPLYING TO SPECIFIC, TO SEVERAL, OR TO ALL DISTRICTS

#### SECTION

- 14-1101. Access control.
- 14-1102. Accessory use regulations.
- 14-1103. Customary home occupations.
- 14-1104. Development standards for cemeteries.
- 14-1105. General lot restrictions.
- 14-1106. Off-street loading and unloading requirements.
- 14-1107. Development standards for mobile homes.
- 14-1108. Off-street parking requirements.
- 14-1109. Signs, billboards, and other advertising structures.
- 14-1110. Gasoline service station provisions.
- 14-1111. Swimming pool restrictions.
- 14-1112. Temporary use regulations.
- 14-1113. Vision at street intersections.
- 14-1114. Planned development regulations.
- 14-1115. Wireless telecommunication towers and antennas.

**14-1101. Access control.** In order to promote the safety of the motorist and pedestrian and to minimize traffic congestion and conflict by reducing the points of contact, the following regulations shall apply:

- (1) A point of access for vehicles on to a street shall not exceed thirty (30) feet in width.
- (2) There shall be no more than two (2) points of access to any one public street for each four hundred (400) feet of lot frontage, or fraction thereof; provided, however, that lots less than one hundred (100) feet in width shall have no more than one point of access to any public street.
- (3) Where two driveways are provided for one lot frontage, the clear distance between driveways shall not be less than twenty-five (25) feet.
- (4) No point of access shall be allowed within twenty (20) feet of the right-of-way line of any public intersection.
- (5) No curbs on city streets or rights-of-way shall be cut or altered without written approval of the zoning board, or if a state highway, a permit must be obtained from the Tennessee Department of Highways. (1979 Code, § 11-901, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1102. Accessory use regulations.** The uses of land, buildings, and other structures permitted in each of the districts established by chapters 2 through 15 of this title are designated by listing the principal uses. In addition

to such principal uses, accessory uses which are customarily incidental to the permitted principal uses are also permitted in each district. Each accessory use shall:

- (1) Be customarily incidental to the principal use established on the same lot.
- (2) Be subordinate to and serve such principal use.
- (3) Be subordinate in area, intent, and purpose to such principal use.
- (4) Contribute to the comfort, convenience, or necessity of users of such principal use. (1979 Code, § 11-902, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, as amended by)

**14-1103. Customary home occupations.** A customary home occupation is a gainful occupation or profession conducted by members of a family residing on the premises and conducted entirely within the principal dwelling unit. In connection with a home occupation, no stock in trade shall be displayed outside the dwelling and no alteration to any building shall indicate from the exterior that the building is being utilized in whole or in part for any purpose other than a residential unit, including permitted accessory buildings. (1979 Code, § 11-903, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1104. Development standards for cemeteries.** The following regulations shall apply to all cemeteries:

- (1) The site proposed for a cemetery shall not interfere with the development of a system of streets and in addition shall have direct access to a thoroughfare.
- (2) Any new cemetery shall be located on a site containing not less than ten (10) acres.
- (3) All structures and facilities including but not limited to mausoleums, graves, burial lots, monuments, and maintenance buildings shall be set back at least thirty (30) feet from any property line or street right-of-way.
- (4) All required yards shall be landscaped and maintained.
- (5) Proposals for cemeteries must be approved by the board of zoning appeals prior to the issuance of a building permit. (1979 Code, § 11-904, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1105. General lot restrictions.** Only one principal building and its customary accessory buildings may be erected on any lot. This provision does not prohibit planned developments as permitted under § 14-1114 of this title. No building shall be erected on a lot which does not abut at least one public street, unless an easement at least thirty (30) feet in width to a street is provided. Such building shall conform to the lot and yard requirements of the district in which it is located. When the rear yard of a lot abuts a public street, all structures built in that rear yard shall observe the same setback from the

street line, center line of the street, or property line as required for adjacent properties which front on that street. No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in area so that yards, lot area per family, lot width, building area, or other requirements of chapters 2 through 15 of this title are not maintained. This section shall not apply when a portion of a lot is acquired for a public purpose. (1979 Code, § 11-906, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1106. Off-street loading and unloading requirements.** Every building or structure hereafter constructed and used for industry, business, or trade involving the receipt or distribution of vehicles, materials, or merchandise shall provide space for the loading and unloading of vehicles off the street or public alley. Such space shall have access to a public or private alley, or, if there is no alley, to a public street. The minimum required spaces for this provision shall be based on the total usable floor area of each principal building according to the following table:

Total usable floor area in square feet for each principal building	Spaces required
0 to 4,999 sq. ft . . . . .	One (1) space
5,000 to 9,999 sq. ft. . . . .	Two (2) spaces
10,000 to 14,999 sq. ft . . . . .	Three (3) spaces
15,000 to 19,999 sq. ft. . . . .	Four (4) spaces
Over 20,000 sq. ft. . . . .	Four (4) spaces plus one (1) space for each additional 20,000 square feet.

(1979 Code, § 11-907, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1107. Development standards for mobile homes.** The following land development standards shall apply for all mobile homes:

A single mobile home may be placed on a lot in the Residential District, R-1, provided that it has a permanent concrete or masonry foundation, driveway, means of ingress and egress, and provided all open space, parking, and setback provisions of the district are complied with; and further provided that all applicable housing and building code provisions are complied with. (1979 Code, § 11-908, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1108. Off-street parking requirements.** (1) In all districts except the C-1 Central Business District and C-1A Central Business District Alpha, off-street parking spaces shall be provided at such time any building or

structure is erected or enlarged or increased in occupant capacity; provided, however, all residential uses permitted in the C-1 Central Business District and C-1A Central Business District Alpha shall provide the minimum required off-street parking spaces for the specific residential use. The number of parking spaces provided shall meet the minimum requirements for the specific uses as set forth below. For uses not specifically mentioned herein, off-street parking requirements shall be determined by the planning commission.

(a) Single and two-family dwellings. Not less than two (2) space for each dwelling unit.

(b) Multiple-family dwellings. Not less than two (2) spaces per dwelling unit.

(c) Boarding houses and rooming houses. Not less than one (1) space for each one (1) room occupied by boarders or roomers.

(d) Hotels, motels, and other tourist accommodations. Not less than one (1) space for each room offered for tourist accommodation.

(e) Commercial building or use. One (1) space for each two hundred (200) square feet of floor space.

(f) Shopping centers. One and one-half (1 1/2) spaces for each one hundred (100) square feet of retail floor space.

(g) Medical or dental clinics. Four (4) spaces per doctor or one (1) space for each one hundred (100) square feet of usable floor space, whichever is greater.

(h) Gasoline stations. Three (3) spaces for each grease rack or similar facility.

(i) Theatres, auditoriums, churches, stadiums, or other uses designed to draw an assembly of persons. Not less than one (1) space for each five (5) seating spaces provided in such place of assembly.

(j) Offices. One (1) space for each one hundred (100) square feet of office space.

(k) Restaurants. One (1) space per one hundred and fifty (150) square feet of floor space, plus one (1) space for each two (2) employees. (For drive-in restaurants, one (1) space per fifty (50) square feet of floor area.)

(l) Private clubs and lodges. One (1) space per three (3) members or one (1) space per seventy (70) square feet of usable floor space.

(2) Certification of minimum parking requirements. Each application for a building permit shall include information as to the location and dimensions of off-street parking and loading space and the means of ingress and egress to such place. This information shall be in sufficient detail to enable the building inspector and zoning board to determine whether or not the requirements of this regulation are met.

(3) Combination of required parking space. The required parking space for any number of separate uses may be combined in one (1) lot but the required



space assigned to one use may not be assigned to another use, except that the parking space required for churches, theatres, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night or on Sundays.

(4) Remote parking space. If the off-street parking space required by the zoning code cannot be reasonably provided on the same lot on which the principal use is located, such space may be provided on any land within four hundred feet (400') of any public entrance to such principal use, provided such land is in the same ownership as the principal use. Such land shall be used for no other purpose so long as no other adequate provision of parking space, meeting the requirements of the zoning code, has been made for the principal use.

(5) Requirements for design of parking lots. (a) Except for parcels of land devoted to one-and two-family residential uses, all areas devoted to off-street parking shall be so designed and be of such size that no vehicle is required to back into a public street to obtain egress.

(b) Each parking space shall be no less than two hundred (200) square feet in area.

(c) Entrances and exits for all off-street parking lots shall comply with the requirements of chapters 2 through 15 of this title.

(d) The parking lot shall be drained to eliminate surface water. (1979 Code, § 11-909, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*, and replaced by Ord. #4-2021, Aug. 2021 *Ch9\_12-05-22*)

#### **14-1109. Signs, billboards, and other advertising structures.**

(1) Purpose of section. The purpose of this section is to create the legal framework for a comprehensive but balanced system of street graphics, and thereby to facilitate an easy and pleasant communication between people and their surroundings. With this purpose in mind, it is the intention of this section to authorize the use of street graphics which are:

(a) Compatible with their surroundings.

(b) Appropriate to the type of activity to which they pertain.

(c) Expressive of the identity of individual proprietors and of the community as a whole.

(d) Legible in the circumstances in which they are seen.

(2) Table of basic design elements. A Table of Basic Design Elements for street graphics is hereby attached to and made a part of chapters 2 through 15 of this title. Except in areas of special control, no street graphics may be erected, displayed, or substantially altered or reconstructed except in conformance with the Table of Basic Design Elements.

(TABLE OF BASIC DESIGN ELEMENTS)

Signs in Commercial Districts		Items of Information	Wall Sign Area Height		Ground Sign Area Height	Projecting Sign Area Height	
How Seen							
<u>Lanes</u>	<u>Speeds</u>						
2	15	10	40%	*	8	6'	**
2	30	10	40%	*	25	6'	**
2	45	10	40%	*	50	20'	**
2	60*	10	40%	*	100	24'	**
4	All Speeds	10	40%	*	200	35'	**

\*See subsection (5) of this section.

\*\*See subsection (6)(b) of this section.

Signs in Floodway Districts. Signs in Floodway Districts must meet the basic design element requirements of that district which the sign is located closest to.

(3) Items of information allowed.

(a) Each land use is entitled to display street graphics containing up to ten items of information on each street or highway to which it has access.

(b) An "item of information" means any of the following: A word; an abbreviation; a number; a symbol; a geometric shape. In addition, graphics combining several different geometric or non-geometrical shapes of unusual configuration are to be assessed one additional item for each non-continuous plane. The name of a business shall not be debited as more than three (3) items of information, no matter the number of words in the name.

(c) In computing items of information, the following lettering is not to be included:

(i) Lettering less than three inches in height, if it is contained in a wall graphic.

(ii) Letters less than 19 inches carved into or securely attached in such a way that they are an architectural detail of a building, provided:

(A) They are not illuminated apart from the building, are not made of a reflecting material, and do not contrast sharply in color with the building; and

(B) Do not exceed one inch in thickness.

(d) Credit card signs, one (1) square foot or less in area, shall not be debited as allowable items of information except for each such sign

over two per business. Then each sign over two (2) is counted as only one (1) item of information.

(e) Provided the items of information allowance authorized by this section is not exceeded, street graphics may be displayed as ground graphics, wall graphics, or projecting graphics, within the limitations and restrictions as further provided by this section.

(4) Ground graphics.

(a) Any activity may display one or more ground graphics of the area and height indicated in the Table of Basic Design Elements, provided:

(i) The activity is accessible by automobile and has off-street parking on the premises; or

(ii) The edge of the building or structure in which the activity is conducted is set back at least thirty-five (35) feet from the edge of the adjacent street or highway right-of-way. The height of a ground graphic shall be measured from the grade at the edge of the right-of-way.

(b) Ground graphics are also subject to the following additional limitations:

(i) A ground graphic which is 12 square feet or more in area may not be closer than 100 feet to any other ground graphic on the same lot which is 12 square feet or more in size;

(ii) An activity may have both ground and projecting graphics if only one of these graphics is six square feet or more in size.

(5) Wall graphics.

(a) Subject to the requirements of the Table of Basic Design Elements, any activity may display wall graphics. Wall graphics may be attached flat to or pinned away from the wall, and may not project from the wall by more than 12 inches.

(b) The permitted area of wall graphics is shown by the Table of Basic Design Elements, which indicates the percentage of the signable area of the building or structure which may be utilized for wall graphics. "Signable area" of the building means an area of the facade of the building up to the roof's eave line which is free of windows and doors or major architectural detail. The person displaying the wall graphic may determine the signable area by choosing one such area on the building facade below the height limits for wall graphics established by this subsection, and by then calculating the number of square feet which are unclosed by an imaginary rectangle or square which is drawn around this area.

(c) In calculating the signable wall area of a building which may be used for wall graphics, the following provisions also apply:

(i) If the graphic is enclosed by a box or outline, the total area of the graphic, including the background, is counted as part of the signable area. If the graphic consists of individual letters, only the area of the letters is counted as part of the signable area;

(ii) If individual letters or a box graphic is placed between window spandrels, the height of the letters or box may not exceed two-thirds of the height of the spandrel;

(iii) A graphic may not cover or interrupt major architectural features.

(d) Wall graphics are subject to the following height regulations:

(i) Wall graphics placed in the space between windows may not exceed in height more than two-thirds of the distance between the top of a window and the sill of the window above, or major architectural details related thereto;

(ii) Wall graphics may not extend above the eaves of the roof of the building to which the graphic is attached.

(6) Projection graphics.

(a) Any commercial or institutional activity may display one projecting graphic on each street frontage. The permitted area of projecting graphics is shown in the Table of Basic Design Elements.

(b) The following additional regulations also apply to projecting graphics:

(i) Projecting graphics must clear sidewalks by at least eight feet, and may project no more than four feet from the building (marquee graphics are excluded from this constraint) or one-third the width of the sidewalk, whichever is less;

(ii) Projecting graphics must be pinned away from the wall at least six inches;

(iii) Projecting graphics are not permitted at the intersection of corners, except at right angles to a building front;

(iv) Projecting graphics may not extend more than twice the allowable projection or to the eaves of the building, whichever is less.

(v) No projecting graphic may be displayed unless the building to which it is attached is 20 feet or more in width, and no projecting graphic may be closer than 50 feet to any other projecting graphic (unless one of the projecting graphics consists solely of a symbol).

(7) Prohibited signs.

(a) Off-premise signs are prohibited. No off-premise sign shall be allowed in any district except as provided herein:

(i) Off-premise signs at intersections. Along any principal arterial or major collector at its intersection with a road leading to a business which business shall not be located on said

arterial or collector, one (1) directional sign for said business may be located.

Along a four-lane highway, two (2) off-premise signs may be located at any one intersection. Along a four-lane highway, an off-premise sign must be located at the near corner of each travel lane (for example, a car traveling north along a highway would view a sign located in the southwest corner of an intersection. A car traveling south approaching the same intersection would view a sign in the northwest corner of the same intersection). Only one side of such an off-premise sign may be used to display advertising symbols. (Therefore, a car driving north in the above mentioned example would view information on the south side of the sign located in the southeast corner of the intersection.)

No other information other than the name and nature of, distance to, and trademark for, each business shall be allowed on such a sign. Arrows may be used on each sign to point the correct direction of each business. Off-premise signs must meet the design element requirement of the district in which it is located, with the exception of the items of information requirement.

In a situation where property is not available at an intersection for the placing of off-premise signs, the Town of Cumberland Gap may permit the location of such signs within the right-of-way of a road, providing that the location of such sign would not interfere with traffic movement and sight distances. Where property is not available and an off-premise sign cannot be satisfactorily located within the adjoining right-of-way, such sign may be located at the closest available property to the appropriate intersection. For such signs, information may be provided to allow for sufficient directions to each individual business advertised on the sign.

(ii) Off-premise directional signs. Off-premise non-promotional directional signs which directional signs direct travelers to the location of certain services and facilities such as parks, schools, and public and semi-public institutions, and which signs shall not exceed two (2) square feet in residential districts and four (4) square feet in all other districts.

(iii) Government signs. Signs established by, or by order of, any governmental agency.

(iv) Temporary posters. Temporary posters as regulated in subsection (9)(d).

(b) Rotating, moving, flashing, changing, reflecting, or blinking signs are prohibited. Signs which rotate, move, flash, reflect, blink, or appear to do any of the foregoing shall be prohibited unless required by law or utilized by a governmental agency.

(c) Signs on public property or right-of-way are prohibited. Signs on public property or right-of-way shall be prohibited unless otherwise authorized in chapters 2 through 15 of this title.

(d) Signs that may be reasonably confused with traffic control devices are prohibited. No sign shall be erected or maintained where by reason of its position, wording, illumination, size, shape, or color it may obstruct, impair, obscure, interfere with the view of, or be confused with, any authorized traffic control signs, signal, or device.

(e) Illuminated signs that reflect light onto residential properties are prohibited. No illuminated sign shall be permitted within fifty (50) feet of property in any residential district unless the illumination of such signs is so designed that it does not shine or reflect light onto such property.

(f) Signs on roofs are prohibited. No signs shall be placed on the roof of any building.

(g) Signs above eave lines and window sills prohibited. A wall graphic may not extend above the eave line of the building to which it is attached. A wall graphic may not extend above the window sill of the second story unless the establishment to which it pertains is located above the first floor, in which case the display may extend as high as the window of the floor above, but no higher.

(8) Signs permitted in any district.

(a) For sale signs. Non-illuminated "for sale", "No Trespassing," "For Rent" or similar signs not exceeding four (4) square feet in area.

(b) Trade construction signs. One sign advertising the various construction trades shall be permitted on construction sites. Such signs shall not exceed thirty-two (32) square feet in area, and shall be removed before a certificate of occupancy is issued.

(c) Government signs. Signs established by, or by order of, any governmental agency.

(d) Professional signs. Professional signs and signs for customary home occupations are not allowed in residential districts.

(e) Nameplates. Nameplates no more than two (2) square feet in area indicating name, address, house-number, and announcement of roomers or boarders.

(f) Land subdivision signs. Signs advertising land subdivisions shall be limited to one (1) double-faced sign of thirty-two (32) square feet per side, placed at a right angle to the street or two (2) thirty-two (32) square foot signs facing the street. Such signs should be at least two hundred (200) feet apart and shall be placed on the subdivision. Such signs shall be removed at the end of two (2) years or when ninety (90) percent of the subdivision is sold, whichever occurs first. These signs shall not be illuminated.

One permanent sign, not to exceed thirty-two (32) square feet in area, may be located at each principal entrance to a subdivision. Such sign shall bear no more information than the name of the subdivision.

(g) Lease potential sign. One sign advertising lease potential for future development, not to exceed twelve (12) square feet in area, shall be permitted for a single parcel multiple unit development. However, such a sign shall not be erected except during the course of construction of the building or buildings and all such signs shall be removed before a certificate of occupancy is issued for the building. These signs shall face the street and shall not be illuminated.

(h) Signs for public safety and convenience. When deemed necessary, the building inspector may authorize and approve signs not to exceed five (5) square feet to be used in conjunction with a use allowed in any district to serve the public safety or convenience, such as "Entrance" sign, "Office" sign, "Parking" sign and the like. One sign per business not more than sixteen (16) square feet in area is allowed for use of a parking area. Such signs are not included in computing allowable items of information.

(i) Awnings, canopies, and marquees. These are permitted for all activities in all areas. However, any letters over three inches in height which are displayed on an awning or canopy are debited against the items of information allowance established by subsections (2) and (3) of this section. Awnings and canopies may extend to within one foot of the vertical plane formed by the curb.

(9) General requirements.

(a) Yard requirements. Advertising structures, in districts other than highway commercial districts, shall be located at least one-half (½) the side, front, and rear yard requirements of the district in which located.

(b) Multiple frontages. If a building has frontage on or access to two or more streets, highways, or expressways, each side of the building is to be separately considered for purposes of determining compliance with the provisions of this section and of the Table of Basic Design Elements. Area allowances for street graphics may be utilized only on the side of the building from which they are calculated.

(c) Lots with more than one (1) business. Where two businesses are located on a single lot, each business is permitted not more than seven (7) items of information. Where three (3) or more businesses are located on the same lot, each business is permitted no more than five (5) items of information. The requirement that a ground graphic which is 12 square feet or more in size still applies in such instances.

(d) Temporary posters, such as political, circus, or auction advertisements. All posters, such as political, circus, or auction

advertisements or the like are subject to the following regulations as well as other applicable requirements of chapters 2 through 15 of this title:

(i) The applicant shall post a one hundred dollar (\$100) cash bond with the town to guarantee removal of the signs.

(ii) Each sign shall not exceed five (5) square feet in area.

(iii) The signs shall not be located closer together than five hundred (500) feet.

(iv) No such signs shall be allowed in any residential zone.

(v) Such signs shall not be nailed to trees, fence posts, or public utility poles and shall not be located in the public right-of-way.

(vi) All such signs advertising events shall be removed within ten (10) days after the event date or the bond posted shall be forfeited and the town shall use whatever part of the bond money as is necessary for removal. Any amount of the bond remaining shall be refunded upon request made within 90 days after the event.

(vii) No fee or permit shall be required for the right to erect political signs but the applicant, or his agent, shall file with the building inspector a map or sketch, or otherwise adequately locate where the signs will be erected.

(e) Obstructing signs. No sign shall be erected, constructed, or maintained so as to obstruct any fire escape or any window or door opening used as a means of egress or so as to prevent free passage from one part of a roof to any other part thereof, nor shall any such sign be attached in any form, shape, or manner as to interfere with any opening required for legal ventilation.

(f) Signs in rights-of-way and on utility poles. No sign shall be erected or otherwise fixed to any utility poles. Nor shall any sign be erected on or otherwise fixed to any poles, tree, stone, fence, building, structure, or other object within the right-of-way of any street.

(g) Signs facing private property prohibited. All signs authorized hereunder must be placed on the side of property facing on public or private right-of-way.

(h) Time and temperature devices are permitted in any commercial district. They may be on the ground, projecting, or attached to the wall, and are subject to the regulations applicable to ground, projecting, and wall graphics. Only those symbols relating to a business are debited as allowable items of information.

(i) Banners. Banners are permitted only for commercial and institutional activities. Each unworded banner counts as one (1) item of information. Worded banners are considered as any sign in reference to items of information.



(j) Temporary window graphics. These are permitted for all commercial activities in all areas. They may not exceed more than 25 percent of the area of the window in which they are displayed.

(k) Vision at street intersections. On a corner lot in intersecting or intercepting streets and a line joining points of such center lines at a distance of seventy-five (75) feet from their intersection, no sign shall be located that would obstruct vision between the height of three (3) feet and a height of ten (10) feet above the average grade of each street.

(10) Areas of special control. Information centers: As special exceptions and under the procedures outlined in chapters 2 through 15 of this title pertaining to special exceptions, the Cumberland Gap Board of Zoning Appeals may permit the establishment of information centers in any commercial district although the design of the project does not include standard signs and advertising displays, allowable numbers of signs, and allowable items of information, providing the departure from the foregoing standards can be made without destroying their intent. Signs in such information centers must be so oriented or screened that information on the signs is not highly viewable from any road right-of-way other than drives that are located within the information center itself. Height requirements may not be waived or varied under the terms of this section.

(11) Amortization.

(a) Any street graphic sign or other advertising device in existence on the effective date of the provisions of chapters 2 through 15 of this title which does not comply with the above regulations is deemed a non-conforming sign. Such a display shall be allowed to remain in existence for a length of time commensurate with initial costs as indicated in the following amortization schedule:

<u>Initial cost</u>	<u>Amortization period</u>
Less than \$100	6 months
\$100 to \$499.99	1 year
\$500 to \$999.99	2 years
\$1,000 to \$2,999.99	3 years
\$3,000 to \$5,000	4 years
Over \$5,000	5 years

(b) The owner or operator of any non-conforming sign must furnish the building inspector with acceptable proof of initial costs in the form of one of the following:

- (i) An original bill of sale;
- (ii) Depreciation schedules from federal or state tax returns;
- (iii) A written appraisal by a sign manufacturer.

(c) If more than one street graphic permitted for an activity is or becomes non-conforming, the original cost of all the street graphics so displayed shall be aggregated for purposes of determining the applicable

amortization period. (1979 Code, § 11-910, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1110. Gasoline service station provisions.** The following regulations shall apply to all gasoline service stations:

(1) There shall be a building setback from all street right-of-way lines of a distance of not less than forty (40) feet.

(2) Gasoline pumps shall not be located closer than fifteen (15) feet to any street right-of-way line.

(3) Sign requirements as established in this chapter shall be met. (1979 Code, § 11-911, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1111. Swimming pool restrictions.** The following regulation shall apply to all swimming pools:

(1) No swimming pool or part thereof, excluding aprons and walks, shall protrude into any required front yard in the Residential Districts, R-1 and R-2.

(2) The swimming pool area shall be walled or fenced so as to prevent uncontrolled access by children and pets from the street or from adjacent properties. Said fence or wall shall be not less than three (3) feet in height and maintained in good condition.

(3) Private swimming pools are permitted in R-1 and C-2 Districts provided that the pool is intended, and is to be used, solely for the enjoyment of the occupants and their guests of the property on which it is located. (1979 Code, § 11-912, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1112. Temporary use regulations.** The following regulations are necessary to govern the operation of certain necessary or seasonal uses non-permanent in nature. Application for a temporary use permit shall be made to the building inspector. Said application shall contain a graphic description of the property to be utilized and a site plan, a description of the proposed use, and sufficient information to determine yard requirements, setbacks, sanitary facilities, and parking space for the proposed temporary use. The following uses are deemed to be temporary uses and shall be subject to the specific regulations and time limits which follow and to the regulations of any district in which such use is located:

(1) Carnival or circus: May obtain a temporary use permit in the C-1 and C-2 districts; however, such permit shall be issued for a period of not longer than fifteen (15) days.

(2) Christmas tree sale: May obtain a 30-day temporary use permit for the display of Christmas trees on open lots in any district.

(3) Real estate sales office: In any district, a temporary use permit may be issued for a temporary real estate sales office in any new subdivision. Such office shall contain no living accommodations. The permit will be valid for one (1) year, but may be granted two (2) six-month extensions. Such office shall be removed upon completion of the development of the subdivision or upon expiration of the temporary use permit, whichever occurs sooner.

(4) Religious tent meetings: In any district, a temporary use permit shall be issued for a tent or other temporary structures to house a religious meeting. Such permit shall be issued for not more than a 30-day period.

(5) Seasonal sale of farm products: In any district, a temporary use permit may be issued for the sale of farm produce. Structures utilized for such sales shall be removed when not in use. The permit shall be issued for a five-month period. All structures must be set back from the roadway a minimum of thirty-five (35) feet.

(6) Temporary buildings: In any district, a temporary use permit may be issued for a contractor's temporary office and equipment sheds incidental to a construction project. Such permit shall not be valid for more than one (1) year but may be renewed for six-month extensions; however, not more than three (3) extensions shall be granted to a particular use. Such use shall be removed upon completion of the construction project, or upon expiration of the temporary use permit, whichever occurs sooner. (1979 Code, § 11-913, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1113. Vision at street intersections.** On a corner lot not in the central business district within the area formed by the center lines of the intersecting or intercepting streets and a line joining points on such center lines at a distance of thirty (30) feet from their intersection, there shall be no obstruction to vision between the height of three and one-half (3) feet and ten (10) feet above the average grade of each street at the center line thereof. The requirements of this section shall not be construed to prohibit any necessary retaining wall. (1979 Code, § 11-914, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1114. Planned development regulations.** In the case of planned developments of two or more buildings to be constructed on a plat of ground of four (4) acres or more, not subdivided into the customary streets and lots and which will not be so subdivided, or where the existing or contemplated street and lot lay-out makes it impracticable to apply the requirements of chapters 2 through 15 of this title to the individual building units in such group housing the application of the terms of chapters 2 through 15 of this title may be varied by the board of zoning appeals in a manner which will be in harmony with the character of the neighborhood and which will insure an intensity of land use no higher and a standard of open space no lower than that permitted by chapters 2 through 15 of this title in the district in which the proposed housing is to be

located. However, in no case shall the board of zoning appeals authorize a use prohibited in the district in which the housing is to be located, or a smaller lot area per family than the minimum required in such district, or a greater height or a larger coverage than the requirements chapters 2 through 15 of this title permit in such a district. (1979 Code, § 11-915, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1115. Wireless telecommunication towers and antennas.**

(1) Purpose. The purpose of this section is to establish general guidelines for the siting of wireless communication towers and antennas. The goals of this section are to:

- (a) Protect residential areas and land uses from potential adverse impacts of towers and antennas;
- (b) Encourage the location of towers in non-residential areas;
- (c) Minimize the total number of towers throughout the community;
- (d) Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
- (e) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
- (f) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;
- (g) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;
- (h) Consider the public health and safety of communication towers; and
- (i) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. In furtherance of these goals, the town council shall give due consideration to the Town of Cumberland Gap's master plan, zoning map, existing land uses, and environmentally sensitive areas in approved sites for the location of towers and antennas.

(2) Definitions. As used in this section, the following terms shall have the meanings set forth below: (a) "Alternative tower structure" means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

(b) "Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

(c) "Backhaul network" means the lines that connect a provider's towers/cell sites to one (1) or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

(d) "FAA" means the Federal Aviation Administration.

(e) "FCC" means the Federal Communications Commission.

(f) "Height" means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

(g) "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

(3) Applicability. (a) New towers and antennas. All new towers or antennas in the Town of Cumberland Gap shall be subject to these regulations, except as provided in 3(b) through (d), inclusive.

(b) Amateur radio station operator/receive only antennas. § 14-1003 shall not govern any tower, or the installation of any antenna, that is under forty (40) feet in height and is owned and operated by an amateur radio station operator or is used exclusively for receive only antennas. All other applicable regulations to towers forty (40) feet and found within this section shall continue to apply.

(c) Preexisting towers or antennas. Preexisting towers and preexisting antennas shall not be required to meet the requirements of this section, other than the requirements of sections 4(f) and 4(g).

(d) AM array. For purposes of implementing this section, an AM array, consisting of one (1) or more tower units and supporting ground system which functions as on AM broadcasting antenna, shall be considered one (1) tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

(4) General requirements. (a) Principal or accessory use. Antennas and towers may be considered either principal or accessory uses. A

different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

(b) Lot size. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

(c) Inventory of existing sites. Each applicant for an antenna and/or tower shall provide to the planning commission an inventory of its existing towers, antennas, or sites approved for towers or antennas that are either within the jurisdiction of the Town of Cumberland Gap or within Cumberland Gap's planning region thereof, including specific information about the location, height, and design of each tower. The planning commission may share such information with other applicants applying for administrative approvals or special use permits under this title or other organizations seeking to locate antennas within the jurisdiction of the Town of Cumberland Gap, provided, however that the planning commission is not, by sharing such information, in any way representing or warranting that such sites are available or suitable for tower construction.

(d) Aesthetics. Towers and antennas shall meet the following requirements:

(i) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

(ii) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

(iii) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(iv) The use of stealth type hidden/disguise antennas are to be encouraged by any applicant and given preference for a tower building permit in any area near a residential zone.

(e) Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views. Where lighting is required by FAA such lighting shall be of the "dual lighting" provisions as defined by the

FAA (white during the day and red during the evening hours) or in the alternative, the structure may be red lighted and marked (painted) as prescribed by the FAA regulations. White flashing lighting at night is strictly prohibited under this section.

(f) State or federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this section shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(g) Building codes: safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town of Cumberland Gap concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(h) Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the Town of Cumberland Gap irrespective of municipal and county jurisdictional boundaries.

(i) Franchises. Owners and/or operators of towers or antennas shall certify that all franchises, authorizations, licenses, and/or permits required by law for the construction and/or operation of a wireless communication system in the Town of Cumberland Gap have been obtained and shall file a copy of all required franchises with the town.

(j) Public notice. For purposes of this section, any special use request, variance request, or appeal of an administratively approved used or special use shall require public notice to all abutting property owners and all property owners of properties that are located within the corresponding separation distance listed in subsection 7(b)(5)(ii), table 2, in addition to any notice otherwise required by the zoning ordinance.

(k) Signs. No signs shall be allowed on an antenna or tower except for any structure identification sign as may be required by the FCC or the FAA. Such sign is not to exceed ten (10) inches by fifteen (15) inches and is to be mounted at the base of the structure no higher than \_\_\_\_\_ feet from the ground.

(l) Buildings and support equipment. Buildings and support equipment associated with antennas or towers shall comply with the requirements of subsection (8).

(m) Multiple antenna/tower plans. The Town of Cumberland Gap encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

(5) Exceptions. (a) The provisions of this part shall not apply to:

(i) Antennas or towers located on property owned, leased, or otherwise controlled by the town and under forty (40) feet in height.

(ii) Antennas or towers located on property owned, leased, or otherwise controlled by the town and over forty (40) feet in height, and in accordance with subsections (6)(a) and (b) of this part.

(6) Administratively approved uses. (a) General. The following provisions shall govern the issuance of administrative approvals for towers and antennas:

(i) The planning commission may administratively approve the uses listed in this section.

(ii) Each applicant for administrative approval shall apply to the planning commission providing the information set forth in (7)(b)(i) and (7)(b)(ii) of this section and a nonrefundable fee as established by resolution of the town council to reimburse the Town of Cumberland Gap for the costs of reviewing the application.

(iii) The planning commission shall review the application for administrative approval and determine if the proposed use complies with subsections (7)(b)(iv) and (7)(b)(v) of this section.

(iv) The planning commission shall respond to each such application within sixty (60) days after receiving it by either approving or denying the application. If the planning commission fails to respond to the applicant within said sixty (60) days, then the application shall be deemed to be approved.

(v) In connection with any such administrative approval, the planning commission may, in order to encourage the use of monopoles, administratively allow the reconstruction of an existing tower to monopole construction.



(vi) If an administrative approval is denied, the applicant shall file an application for a special use permit pursuant to subsection (7) of this section and other applicable provisions of the special use permit found in title 14, chapter 12.

(b) List of administratively approved uses. The following uses may be approved by the planning commission after conducting an administrative review:

(i) Locating a tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna, in any business/transportation zone

(ii) Locating antennas on existing structures or towers consistent with the terms of subsections (A) and (B) below:

(A) Antennas on existing structures. Any antenna which is not attached to a tower may be approved by the planning commission as an accessory use to any commercial, industrial, professional, institutional, or multi-family structure of eight or more dwelling units, provided:

(1) The antenna does not extend more than ten (10) feet above the highest point of the structure; the main structure cannot exceed a maximum of fifty (50) feet; and

(2) The antenna complies with all applicable FCC and FAA regulations; and

(3) The antenna complies with all applicable building codes.

(B) Antennas on existing towers. An antenna which is attached to an existing tower may be approved by the planning commission and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one (1) carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:

(1) A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing tower, unless the planning commission allows reconstruction as a monopole.

(2) Height.

(i) An existing tower may be modified or rebuilt to a taller height, not to exceed fifty (50) feet total height, to

accommodate the collocation of an additional antenna.

(ii) The height change referred to in subsection (iii)(A) may only occur one (1) time per communication tower.

(iii) The additional height referred to in subsection (iii)(A) shall not require an additional distance separation as set forth in subsection (7). The tower's premodification height shall be used to calculate such distance separations.

(3) Onsite location.

(i) A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved onsite within fifty (50) feet of its existing location.

(ii) After the tower is rebuilt to accommodate collocation, only one (1) tower may remain on the site.

(iii) A relocated onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to subsection (7)(b)(v). The relocation of a tower hereunder shall in no way be deemed to cause a violation of subsection (7)(b)(v).

(iv) The onsite relocation of a tower which comes within the separation distances to residential units or residentially zoned lands as established in (7)(b)(v) shall only be permitted when approved by the planning commission.

(iii) New towers in non-residential zoning districts. Locating any new tower in a non-residential zoning district provided a licensed professional engineer certifies the tower can structurally accommodate the number of shared users proposed by the applicant; the planning commission concludes the tower has no electrical disturbance or interference (no manufacturing, processing or assembling use may create any electrical disturbance that adversely affects any operation or equipment other than those of the creator of such disturbance, or otherwise cause, create, or contribute to the interference with electronic signals

(including television and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected); and the requirements of subsection (4); the tower meets the setback requirements in subsection (7)(b)(iv) and separation distances in subsection (7)(b)(v) and all other provisions in subsection (7); and the tower meets the following height and usage criteria:

(A) For a single user, up to fifty (50) feet total height of main structure;

(B) For two (2) users, up to fifty (50) feet total height of main structure; and

(C) For three (3) or more users, fifty (50) feet total height of main structure;

(iv) Locating any alternative tower structure in a zoning district other than industrial or heavy commercial that in the judgment of the planning commission is in conformity with the goals set forth subsection (10) of this section.

(v) Installing a cable microcell network through the use of multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

(7) Special use permits. (a) General. The following provisions shall govern the **issuance** of special use permits for towers or antennas by the board of zoning appeals.

(i) If the tower or antenna is not a permitted use under subsection (5) of this section or permitted to be approved administratively pursuant to subsection (6) of this section, then a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning district classifications.

(ii) Applications for special use permits under this section shall be subject to the procedures and requirements of title 14, chapter 12, except as modified in this section.

(iii) In granting a special use permit, the board of zoning appeals may impose conditions to the extent the board of zoning appeals concludes such conditions are necessary to minimize adverse effects of the proposed tower on adjoining properties.

(iv) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer under the guidelines of the State of Tennessee for such certifications.

(v) An applicant for a special use permit shall submit the information described in this section and a non-refundable fee as established by resolution of the town council to reimburse the Town of Cumberland Gap for the costs of reviewing the application.

(b) Towers.

(i) Information required. In addition to any information required for applications for special use permits pursuant to title 14, chapter 12, applicants for a special use permit for a tower shall submit the following information:

(A) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), master plan classification of the site and all properties within the applicable separation distances set forth in subsection (7)(b)(v), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the planning commission to be necessary to assess compliance with this section.

(B) Legal description of the parent tract and leased parcel (if applicable). The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.

(C) The separation distance from other towers described in the inventory of existing sites submitted pursuant to subsection (4)(c) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.

(D) A landscape plan showing specific landscape materials.

(E) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.

(F) A description of compliance with subsections (4)(c), (d), (e), (f), (g), (j), (l), and (m), (7)(b)(iv), (7)(b)(v) and all applicable federal, state or local laws.

(G) A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.

(H) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.

(I) A description of the feasible location(s) of future towers or antennas within the Town of Cumberland Gap based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.

(J) A copy of the stress analysis of the proposed structure including reasonably anticipated loads of additional users, and certified by a State of Tennessee licensed professional engineer.

(ii) Factors considered in granting special use permits for towers. In addition to any standards for consideration of special use permit applications pursuant to title 14, chapter 12, the board of zoning appeals shall consider the following factors in determining whether to issue a special use permit, although the board of zoning appeals may waive or reduce the burden on the applicant of one (1) or more of these criteria if the board of zoning appeals concludes that the goals of this section are better served thereby:

(A) Height of the proposed tower;

(B) Proximity of the tower to residential structures and residential district boundaries;

(C) Nature of uses on adjacent and nearby properties;

(D) Surrounding topography;

(E) Surrounding tree coverage and foliage;

(F) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

(G) Proposed ingress and egress; and

(H) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in subsection (7)(b)(iii) of this section.

(iii) Availability of suitable existing towers, other structures, or alternative technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the board of zoning appeals that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed

antenna. An applicant shall submit information requested by the board of zoning appeals related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

(A) No existing towers or structures are located within the geographic area which meets applicant's engineering requirements.

(B) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

(C) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

(D) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

(E) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

(F) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

(G) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

(H) Self supporting structures are to be encouraged over guyed towers. Applicant must demonstrate that a self-supported structure is not feasible before any guyed tower will be approved.

(iv) Setbacks. The following setback requirements shall apply to all towers for which a special use permit is required; provided, however, that the board of zoning appeals may reduce the standard setback requirements if the goals of this section would be better served thereby:

(A) Towers must be set back a distance equal to at least seventy-five percent (75%) of the height of the tower from any adjoining lot line.

(B) Guys and accessory buildings must satisfy the minimum zoning district setback requirements.

(v) Separation. The following separation requirements shall apply to all towers and antennas for which a special use permit is required; provided, however, that the board of zoning appeals may reduce the standard separation requirements if the goals of this section would be better served thereby.

(A) Separation from off-site uses/designated areas.

(1) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in table 1, except as otherwise provided in table 1.

(2) Separation requirements for towers shall comply with the minimum standards established in table 1.

Table 1:

Off-site Use/Designated Area	Separation Distance
Single-family or duplex residential units	200 feet or 300% height of tower whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	200 feet or 300% height of tower whichever is greater
Vacant unplatted residentially zoned lands	200 feet or 200% height of tower whichever is greater
Existing multi-family residential units greater than duplex units	200 feet or 100% height of tower whichever is greater
Non-residentially zoned lands or non-residential uses	None; only setbacks apply

(B) Separation distances between towers.

(1) Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the

existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in table 2.

Table 2:  
Existing Towers - Types

	Lattice	Guyed	Monopole 50 ft. in height	Monopole less than 50 ft. in height
Lattice	5,000	5,000	5,000	750
Guyed	5,000	5,000	5,000	750
Monopole 75 ft in height or greater	1,500	1,500	1,500	750
Monopole less than 75 ft in height	750	750	750	750

(vi) Security fencing. Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the board of zoning appeals may waive such requirements, as it deems appropriate.

(vii) Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the board of zoning appeals may waive such requirements if the goals of this section would be better served thereby.

(A) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.

(B) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.

(C) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large,



wooded lots, natural growth around the property perimeter may be sufficient buffer.

(8) Buildings or other equipment storage. (a) Antennas mounted on structures or rooftops. The equipment cabinet or structure used in association with antennas shall comply with the following:

(i) The cabinet or structure shall not contain more than one hundred (100) square feet of gross floor area or be more than twelve (12) feet in height. In addition, for buildings and structures which are less than fifty (50) feet in height, the related unmanned equipment structure, if over one hundred (100) square feet of gross floor area or twelve (12) feet in height, shall be located on the ground and shall not be located on the roof of the structure.

(ii) If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than ten percent (10%) of the roof area.

(iii) Equipment storage buildings or cabinets shall comply with all applicable building codes.

(b) Antennas mounted on utility poles or light poles. The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:

(i) In residential districts, the equipment cabinet or structure may be located:

(A) In a front or side yard provided the cabinet or structure is no greater than twelve (12) feet in height or one hundred (100) square feet of gross floor area and the cabinet/structure is located a minimum of twenty-five (25) feet from all lot lines. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least forty-two to forty-eight (42-48) inches and a planted height of at least thirty-six (36) inches.

(B) in a rear yard provided the cabinet or structure is no greater than twelve (12) feet in height or one hundred (100) square feet in gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least thirty-six (36) inches.

(ii) In business/transportation districts the equipment cabinet or structure shall be no greater than twenty (20) feet in height or two hundred (200) square feet in gross floor area. The structure or cabinet shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least thirty-six (36) inches. In all other instances, structures or cabinets shall be screened from view of all residential properties which abut

or are directly across the street from the structure or cabinet by a solid fence six (6) feet in height or an evergreen hedge with ultimate height of twelve (12) feet and a planted height of at least thirty-six (36) inches.

(c) Equipment structures to be located on towers. The related unmanned equipment structure shall not contain more than one hundred (100) square feet of gross floor area or be more than twelve (12) feet in height, and shall be located no closer than forty (40) feet from all lot lines.

(d) Modification of building size requirements. The requirements of subsections 8(a) through (c) may be modified by the planning commission in case of administratively approved uses or by the board of zoning appeals in case of uses permitted by special use to encourage collocation.

(9) Removal of abandoned antennas and towers. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the Town of Cumberland Gap notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's expense. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users abandon the tower.

(10) Nonconforming uses. (a) Preexisting towers. Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this section. Any expansion of an existing use shall be reviewed and permitted according to the terms of this section.

(b) Rebuilding damaged or destroyed nonconforming towers or antennas. Notwithstanding subsection (9), bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special use permit and without having to meet the separation requirements specified in subsections (7)(b)(iv) and (7)(b)(v). The type, height, and location of the tower onsite shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within one hundred eighty (180) days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in subsection (9). (as added by Ord. #7-2007, Jan. 2008, and renumbered by Ord. #10-2013, Dec. 2013)

## CHAPTER 12

### EXCEPTIONS AND MODIFICATIONS

#### SECTION

- 14-1201. Scope.
- 14-1202. Non-conforming uses.
- 14-1203. Exceptions to height limitations.
- 14-1204. Lots of record.
- 14-1205. Exceptions to front setback requirements.
- 14-1206. Minimum lot size.

**14-1201. Scope.** This chapter is devoted to providing for the necessary exceptions and modifications to the specific zoning district provisions and supplementary provisions provided elsewhere in chapters 2 through 15 of this title. (1979 Code, § 11-1001, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1202. Non-conforming uses.** It is the intent of chapters 2 through 15 of this title to recognize that the elimination, as expeditiously as is reasonable, of the existing buildings and structures or uses that are not in conformity with the provisions hereof is as much a subject of health, safety, and welfare as is the prevention of the establishment of new uses that would violate the provisions of chapters 2 through 15 of this title. It is also the intent of chapters 2 through 15 of this title to so administer the elimination of non-conforming uses, buildings, and structures as to avoid an unreasonable invasion of established private property rights. Lawful non-conforming uses, buildings, and structures existing at the time of the passage of the provisions of chapters 2 through 15 of this title or any amendment thereto, shall be allowed to remain subject to the following provisions:

(1) An existing non-conforming use of a building may be changed to a conforming use or to another non-conforming use of the same classification; provided, however, that establishment of another non-conforming use of the same classification shall be subject to such conditions as the board of zoning appeals may require in order to protect the area.

(2) A non-conforming use of land or building which is being used as a commercial use may be expanded; provided that it is expanded in accordance with provisions of the district in which it is located, and that land used for expansion was not purchased after the enactment of the provisions of chapters 2 through 15 of this title.

(3) When a non-conforming use of any structure or land, excepting non-conforming mobile homes, has been discontinued for a period of six (6)

months, it shall not be reestablished or changed to any use not in conformity with the provisions of chapters 2 through 15 of this title. Immediately upon the removal of a non-conforming mobile home or discontinuance of a non-conforming mobile home or travel trailer park, the non-conformity of such structure and use of land shall lapse.

(4) Any non-conforming building or non-conforming use which is damaged by fire, flood, wind, or other act of God or man, may be reconstructed and used as before if it be done within twelve (12) months of such damage, unless damaged to the extent of more than seventy-five (75) percent of its fair sales value immediately prior to damage in which case any repair or reconstruction shall be in conformity with the provisions of chapters 2 through 15 of this title.

(5) A non-conforming building or building housing a non-conforming use shall not be structurally altered except in conformance with the provisions of chapters 2 through 15 of this title. This provision shall not be construed to prevent maintenance and repairs or alterations required for structural safety. (1979 Code, § 11-1002, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 **Ch7\_01-07-19**)

**14-1203. Exceptions to height limitations.** The height limitations of chapters 2 through 15 of this title shall not apply to water towers, transmission towers, church belfries, chimneys, radio towers, and other structures, which in the opinion of the board of zoning appeals will not adversely affect the neighborhood. (1979 Code, § 11-1003, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 **Ch7\_01-07-19**)

**14-1204. Lots of record.** Where the owner of a lot consisting of one or more adjacent lots of official record at the time of the adoption of the provisions of chapters 2 through 15 of this title does not own sufficient land to enable him to conform to the yard or other requirements hereof, an application may be submitted to the board of zoning appeals for a variance from the terms hereof. Such a lot may be used as a building site; provided, however, that the yard and other requirements of the district are complied with as closely in the opinion of the board of zoning appeals, as is possible. Where two or more lots of record with a continuous frontage are under the same ownership, or where a substandard lot of record has continuous frontage with a larger tract under the same ownership, such lots shall be combined to form one or more building sites meeting the minimum requirements of the district in which they are located. (1979 Code, § 11-1004, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 **Ch7\_01-07-19**)

**14-1205. Exceptions to front setback requirements.** The front setback requirement of chapters 2 through 15 of this title for dwellings shall not apply to any lot where the average depth of existing setbacks on the developed lots located within one hundred (100) feet on each side of such lot is less than the minimum required front yard depth. In such cases, the front yard setback may be less than required but not less than the average of the existing depth for front yards on developed lots within one hundred (100) feet on each side of the lot. In residential districts, however, the setback shall in no case be less than fifteen (15) feet from the street right-of-way line. (1979 Code, § 11-1005, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1206. Minimum lot size.** In no case shall the board of zoning appeals permit a residence to be erected on a lot whose width at the building line is less than fifty (50) feet and/or whose total lot area is less than five thousand (5,000) square feet. Due to new minimum lot size requirements those wishing to subdivide their land should first consult with the Tennessee Department of Public Health concerning lot size. (1979 Code, § 11-1006, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**CHAPTER 13****ADMINISTRATION AND ENFORCEMENT****SECTION**

- 14-1301. Administration.
- 14-1302. The enforcement officer.
- 14-1303. Building permits.
- 14-1304. Permit fees.
- 14-1305. Temporary use permits.
- 14-1306. Certificate of occupancy.
- 14-1307. Remedies.

**14-1301. Administration.** Except as otherwise provided, no structure or land shall, after the effective date of the provisions of chapters 2 through 15 of this title, be used and no structure or part thereof shall be erected, altered, or moved unless in conformity with the requirements herein specified for the district in which it is located. In their interpretation and application, the provisions of chapters 2 through 15 of this title shall be considered minimum requirements adopted for the promotion of public health, safety, morals, convenience, order, prosperity, and general welfare of the community. Where other ordinances, resolutions, or regulations heretofore adopted or which may be adopted hereafter impose greater restrictions than those specified herein, compliance with such other ordinances, resolutions, or regulations is mandatory. (1979 Code, § 11-1101, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1302. The enforcement officer.** The provisions of chapters 2 through 15 of this title shall be administered by the Cumberland Gap Building Inspector. The building inspector shall administer and enforce chapters 2 through 15 of this title after approval from the planning and zoning commission and, in addition, he shall:

- (1) Issue all building permits and make and maintain records thereof.
- (2) Issue all certificates of occupancy and make and maintain records thereof.
- (3) Issue and renew, where applicable, all temporary use permits and make and maintain records thereof.
- (4) Maintain and keep current zoning maps and records of amendments thereto.
- (5) Conduct inspections as required in chapters 2 through 15 of this title and such other inspections as are necessary to insure compliance with the various other general provisions hereof. The building inspector shall possess the right to enter upon any premises for the purpose of making inspections of

buildings or premises necessary to carry out his authorized duties. (1979 Code, § 11-1102, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1303. Building permits.** It shall be unlawful to commence the excavation for or the construction of any building or other structure, including accessory structures, to commence the moving, alteration, or repair of any structure, including accessory structures, or to commence the filling of land until the building inspector has issued for such work a building permit containing a statement that the plans, specifications, and intended use of such structure in all respects conform with the provisions of chapters 2 through 15 of this title. Application for a building permit shall be made in writing to the building inspector on forms provided for that purpose.

It shall be unlawful for the building inspector to approve the plans or issue a building permit for any excavation or construction until he has inspected such plans in detail and found them to be in conformity with the provisions of chapters 2 through 15 of this title. To this end, the building permit for excavation, construction, moving, or alteration shall be accompanied by a plan or plat drawn to a scale and showing the following in sufficient detail to enable the building inspector to ascertain whether the proposed excavation, construction, moving, or alteration is in conformance with the provisions of chapters 2 through 15 of this title:

(1) The actual shape, location, and dimensions of the lot to be built upon.

(2) The shape, size, and location of all buildings or other structures to be erected, altered, or moved and of buildings or other structures already on the lot.

(3) The existing and intended use of all such buildings or other structures.

(4) Location and design of off-street parking areas and off-street loading areas. Such other information concerning the lot or adjoining lots as may be essential for determining whether the provisions of chapters 2 through 15 of this title are being observed. If the proposed excavation, construction, moving, or alteration as set forth in the application is in conformity with the provisions hereof, the building inspector shall issue a building permit for such excavation or construction. If an application for a building permit is not approved, the building inspector shall state in writing on the application the cause for such disapproval. Issuance of a permit shall, in no case, be construed as waiving any provisions of chapters 2 through 15 of this title and building permits shall be void after six (6) months from date of issue unless substantial progress on the project has been made by that time. (1979 Code, § 11-1103, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1304. Permit fees.** (1) Schedule of building permit fees. The schedule of building permit fees shall be as follows based on total valuation of construction:

\$1,000 and less	No fee, unless inspection required, in which case a \$25.00 Fee + a \$5.00 recording fee for each inspection shall be charged.
\$1,001 to \$49,999	\$25.00 + \$5.00 recording fee for the first \$1,000.00 plus \$5.00 for each additional thousand or fraction thereof, to, and including \$49,999.
\$50,000.00 to \$99,999	\$260.00 for the first \$50,000.00 plus \$4.00 for each additional thousand or fraction thereof, to, and including \$99,999.
\$100,000 to \$599,999	\$460.00 for the first \$100,000.00 plus \$3.00 for each additional thousand or fraction thereof, to and including \$599,999.
\$600,000 and up	\$1,660.00 for the first \$600,000 plus \$2.00 for each additional thousand or fraction thereof.

(2) Plan check fees. When the valuation of the proposed construction is \$300,000 or more a plan-checking fee is required and shall be paid at the time of submitting plans and specifications. The fee shall be paid to the Town of Cumberland Gap and then disbursed to the building inspector in increments. Such plan-checking fee is in addition to the building permit fee. The plan-checking fee is as follows:

For a project totaling \$300,000 - \$599,999 the plan-checking fee would be one-half (1/2) times the building permit

For a project totaling \$600, 000 and up - the plan-checking fee would be one (1) times the building permit

When buildings and plans are identical, the plan-checking fee for the additional buildings will be one-half (1/2) of the original plan-checking fee

(3) Moving fee. For the moving of any building or structure, the fee shall be sixty dollars (\$60.00).

(4) Demolition fee. For the demolition of any building or structure, the fee shall be sixty dollars (\$60.00).



(5) **Penalties.** Where work for which permit is required by this code is started or proceeded prior to obtaining said permit, the fees herein specified shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of this code in the execution of the work nor from any other penalties prescribed herein. (as added by Ord. #1-2014, Feb. 2014)

**14-1305. Temporary use permits.** It shall be unlawful to commence construction or development of any use of a temporary nature until a permit accompanied by a \$5.00 fee, has been secured from the Cumberland Gap Building Inspector, as provided for in § 14-912 of this code. Application for a temporary use permit shall be made in writing to the building inspector on forms provided for that purpose. (1979 Code, § 11-1104, as renumbered by Ord. #9-2005, Oct. 2005, Ord. #10-2013, Dec. 2013, and Ord. #1-2014, Feb. 2014)

**14-1306. Certificate of occupancy.** No land or building or other structure or part thereof hereafter erected, moved, or altered in its use shall be used until the building inspector shall have issued a certificate of occupancy stating that such land, structure, or part thereof is found to be in conformity with the provisions of chapters 2 through 15 of this title. Within three (3) days after notification that a building or premises or part thereof is ready for occupancy or use, it shall be the duty of the building inspector to make a final inspection thereof, and to issue a certificate of occupancy, if the building or premises or part thereof is found to conform with the provisions of chapters 2 through 15 of this title; or, if such certificate is refused, to state the refusal in writing with the cause of such refusal. (1979 Code, § 11-1105, as renumbered by Ord. #9-2005, Oct. 2005, Ord. #10-2013, Dec. 2013, and Ord. #1-2014, Feb. 2014, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1307. Remedies.** In case any building or other structure is erected, constructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of chapters 2 through 15 of this title, the building inspector or any other appropriate authority or any adjacent or neighboring property owner who would be specifically damaged by such violation, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; or to correct or abate such violation; or to prevent occupancy of such building, structure, or land. (1979 Code, § 11-1106, as renumbered by Ord. #9-2005, Oct. 2005, Ord. #10-2013, Dec. 2013, and Ord. #1-2014, Feb. 2014, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

## CHAPTER 14

### BOARD OF ZONING APPEALS

#### SECTION

- 14-1401. Board of zoning appeals established.
- 14-1402. Procedure.
- 14-1403. Appeals to the board of zoning appeals.
- 14-1404. Powers of the board of zoning appeals.
- 14-1405. Variances.
- 14-1406. Procedure for authorizing special exceptions.

**14-1401. Board of zoning appeals established.** The Town of Cumberland Gap Board of Zoning Appeals is hereby established in accordance with Tennessee Code Annotated, §§ 13-7-205 through 13-7-207. The board of zoning appeals shall consist of the Cumberland Gap Municipal Planning Commission. (1979 Code, § 11-1201, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1402. Procedure.** Meetings of the board of zoning appeals shall be held at the call of the chairman, and at such other times as the board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall adopt rules of procedure and shall keep records of applications and action taken thereon which shall be public records. (1979 Code, § 11-1202, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1403. Appeals to the board of zoning appeals.** An appeal to the Cumberland Gap Board of Zoning Appeals may be taken by any person, firm, or corporation aggrieved, or by any governmental office, department, board, or bureau affected by any decision of the building inspector based in whole or in part upon the provisions of chapters 2 through 15 of this title. Such an appeal shall be taken by filing with the board of zoning appeals a notice of appeal specifying the grounds thereof. The building inspector shall transmit to the board all papers constituting the record upon which the action appealed was taken. The board shall fix a reasonable time for the hearing of the appeal, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any person or party may appear in person, by agent, or by attorney. (1979 Code, § 11-1203, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, as amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1404. Powers of the board of zoning appeals.** The board of zoning appeals shall have the following powers:

(1) Administrative review. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision, determination, or refusal made by the building inspector or other administrative official in the carrying out or enforcement of any provision of chapters 2 through 15 of this title.

(2) Special exceptions. To hear and decide applications for special exceptions as specified in chapters 2 through 15 of this title, hear requests for interpretation of the zoning map, and for decision on any special questions upon which the board of zoning appeals is authorized to pass.

(3) Variations. To hear and decide applications for variations from the terms of chapters 2 through 15 of this title. (1979 Code, § 11-1204, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1405. Variations.** The purpose of a variation is to modify the strict application of the specific requirements of chapters 2 through 15 of this title in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variation shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under chapters 2 through 15 of this title.

(1) Application. After written denial of a permit, a property owner may make application for a variation, using any form which might be made available by the board of zoning appeals.

(2) Hearings. Upon receipt of an application and fee, the board shall hold a hearing to decide whether a variation to chapters 2 through 15 of this title is, in fact, necessary to relieve unnecessary hardships which act to deprive the property owner of the reasonable use of his land. The board shall consider and decide all applications for variations within thirty (30) days of such hearing and in accordance with the standards provided below.

(3) Standards for variations. In granting a variation, the board shall ascertain that the following criteria are met:

(a) Variations shall be granted only where special circumstances or conditions, fully described in the finding of the board, do not apply generally in the district.

(b) Variations shall not be granted to allow a use otherwise excluded from the particular district in which requested.

(c) For reasons fully set forth in the findings of the board, the aforesaid circumstances or conditions are such that the strict application of the provisions of chapters 2 through 15 of this title would deprive the

applicant of any reasonable use of his land. Mere loss in value shall not justify a variance. There must be a deprivation of beneficial use of land.

(d) The granting of any variance shall be in harmony with the general purposes and intent of chapters 2 through 15 of this title and shall not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with comprehensive plan for development.

(e) In reviewing an application for a variance, the burden of showing that the variance should be granted shall be upon the person applying therefor. (1979 Code, § 11-1205, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1406. Procedure for authorizing special exceptions.** The following procedure is established to provide procedures for review of a proposed use by the Cumberland Gap Board of Zoning Appeals. The procedure shall be the same whether review is required by chapters 2 through 15 of this title or whether a review is requested by the building inspector to determine whether a proposed use is potentially noxious, dangerous, or offensive. This procedure shall also be used in submitting special exceptions for the board of zoning appeals review.

(1) Application. An application shall be filed with the board of zoning appeals for review. Said application shall show the location and intended uses of the site, the names of the property owners and existing land uses within two hundred (200) feet and any other material pertinent to the request which the board of zoning appeals may require.

(2) Restrictions. In the exercise of its approval, the board of zoning appeals may impose such conditions upon the proposed uses of buildings or land as it may deem advisable in the furtherance of the general purposes of chapters 2 through 15 of this title.

(3) Validity of plans. All approved plans, conditions, restrictions, and rules made a part of the approval of the board of zoning appeals shall constitute certification on the part of the applicant that the proposed use shall conform to such regulations at all times.

(4) Time limit. All applications reviewed by the board of zoning appeals shall be decided within sixty (60) days of the date of application, and the applicant shall be provided with either a written notice of approval or denial. (1979 Code, § 11-1206, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

## CHAPTER 15

### HISTORIC ZONING COMMISSION

#### SECTION

- 14-1501. Historic zoning commission established.
- 14-1502. Procedure.
- 14-1503. Historic zoning commission powers and duties.
- 14-1504. Jurisdiction.
- 14-1505. The Historic District.
- 14-1506. Design procedure.
- 14-1507. Building and fire codes.
- 14-1508. Certificate of Appropriateness (COA).
- 14-1509. Architectural style.
- 14-1510. Design guidelines for existing structures.
- 14-1511. Design guidelines for new construction.
- 14-1512. Guidelines for streetscapes.
- 14-1513. Building relocation.
- 14-1514. Building demolition.
- 14-1515. Amendment.
- 14-1516. Enforcement.

**14-1501. Historic zoning commission established.** In accordance with title 13, chapter 7, part 4 of Tennessee Code Annotated, a historic zoning commission is hereby established. The historic zoning commission shall consist of a representative of a local patriotic or historic organization; an architect, if available; and a member of the Cumberland Gap Municipal Planning Commission. The remaining members and chair shall be appointed by the Mayor of the Town of Cumberland Gap from the community in general and shall be confirmed by the board of mayor and alderman. Appointments to membership on the historic zoning commission shall be arranged so that the term of one (1) member shall expire each year and his successor shall be appointed, or member whose term expires can be reappointed, in a like manner for a five (5) year term. All members shall serve without compensation. (1979 Code, § 11-1301, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, replaced by Ord. #17-2015, Jan. 2016, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

**14-1502. Procedure.** Meetings of the historic zoning commission shall be held at the call of the chairman or by the majority of the membership. All meetings of the commission shall be open to the public. The commission shall keep minutes of its procedures showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. (1979 Code,

§ 11-1302, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and replaced by Ord. #17-2015, Jan. 2016)

**14-1503. Historic zoning commission powers and duties.** The historic zoning commission shall have the following powers:

(1) To request detailed construction plans and related data pertinent to thorough review of any proposal before the commission.

(2) The historic zoning commission shall within thirty (30) days following availability of sufficient data, direct the granting of a building permit with or without conditions or direct the refusal of a building permit providing the grounds are stated in writing.

(3) Upon review of the application for a building permit in the H-1 Historic District, the historic zoning commission shall give prime consideration to:

(a) Historical and/or architectural value of present structures;

(b) Relationship of exterior architectural features of such structures to the remainder of the structures of the surrounding area;

(c) The general compatibility of exterior design, arrangement, texture, and materials proposed to be used with existing structures in the H-1 Historic District;

(d) To any other factor which is deemed pertinent.

(4) In no case shall the commission grant variances from the terms of this chapter. (1979 Code, § 11-1303, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and replaced by Ord. #17-2015, Jan. 2016)

**14-1504. Jurisdiction.** The historic zoning commission shall have exclusive jurisdiction relating to historic or architectural matters. Anyone aggrieved by any final order or judgment of the commission may have such order or judgment reviewed as specified in chapter 14 and/or in the courts by procedures of certiorari as provided in the Tennessee Code Annotated, §§ 27-9-102 and 27-9-103. (1979 Code, § 11-1304, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, replaced by Ord. #17-2015, Jan. 2016, and amended by Ord. #6-2018, Dec. 2018 **Ch7\_01-07-19**)

**14-1505. The Historic District; geographic overview.** The central business district, intermixed with some housing and the adjacent residential area compose the Cumberland Gap Historic District. It consists of two (2) primary streets: Colwyn (largely commercial) and Pennlyn (largely residential). The district is as illustrated on the map attached to Ord. #17-2015.<sup>1</sup> (1979 Code,

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<sup>1</sup>Ord. #17-2015 is available in the recorder's office.

§ 11-1305, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and replaced by Ord. #17-2015, Jan. 2016)

**14-1506. Design procedure.** (1) Historic zoning commission responsibilities. The Historic Zoning Commission (HZC) is responsible for reviewing changes in the exterior facades visible from the street. HZC reviews new construction and relocated buildings to ensure compatibility with existing buildings in the district. No structure can be demolished until reviewed by the HZC. The HZC reviews setbacks, building shape and height, facades, window and door proportions and groupings, overhangs, roofline, streetscape, signage and landscaping. Form and proportion shall harmonize with existing design elements in the district.

The HZC recommends that property owners and builders meet with the HZC at the pre-design stage to familiarize the HZC with the site and discuss the guidelines. A Certificate of Appropriateness (COA) from the HZC as well as approval from planning and zoning commission and the board of mayor and alderman is required before construction or renovation begins. The COA is available at town hall. (as added by Ord. #17-2015, Jan. 2016)

**14-1507. Building and fire codes.** Applicants shall comply with all town-adopted building and fire codes. (as added by Ord. #17-2015, Jan. 2016)

**14-1508. Certificate of Appropriateness (COA).** (1) After applying and getting approval from the planning and zoning commission for a building permit, the property owner or authorized agent must apply to the historic zoning commission for a Certificate of Appropriateness (COA) before beginning any work on exterior changes or any new construction. A complete application for certificate of appropriateness shall be received at town hall on or before the first Tuesday of the month and approval of the application will be issued or denied at the next scheduled meeting of the historic zoning commission or within thirty (30) days, except when the time line has been extended by written mutual agreement between the property owner and the HZC. Inaction of the HZC on a completed application after thirty (30) days will result in an application's default approval.

(2) The chairman for the HZC, or town hall, shall notify the applicant of the result of the application at the scheduled meeting or by registered mail (on or before thirty (30) days after receipt of a complete application) and shall file a copy with town hall for planning and zoning. If an application is denied, such notice shall include the reasons for such actions as defined in the design guidelines. If the applicant is available at the HZC meeting the result can be noted in the minutes and a copy given to the applicant. (as added by Ord. #17-2015, Jan. 2016, and amended by Ord. #6-2018, Dec. 2018 **Ch7\_01-07-19**)

**14-1509. Architectural style.** The town's largest commercial buildings in the historic district are characterized by a horizontal division with the upstairs being more private spaces such as apartments or offices, thus residential. And the downstairs is a commercial zone such as stores or banks. (as added by Ord. #17-2015, Jan. 2016)

**14-1510. Design guidelines for existing structures.** (1) Essential principles. In reviewing applications for certificates of appropriateness for existing structures, the HZC shall consider the historic and architectural significance of the structure. In its review, the HZC shall also take into account the following elements to ensure that the exterior form and appearance of the structure is consistent with the historic character of the district:

- The height of the building in relation to the average height of the nearest adjacent and opposite buildings
- The setback and placement on the lot of the building in relation to the average setback and placement of the nearest adjacent and opposite buildings
- Exterior construction materials, including textures and patterns
- Architectural detailing, such as doors, windows, lintels, cornices, brick bond, and foundation materials
- Roof shapes, overhangs, forms, and materials
- Proportions, shapes, positioning and locations, patterns and sizes of any elements of fenestration (an opening in a structure, such as a door or window)
- General form and proportions of buildings and structures
- Appendages, fixtures and other features such as lighting
- Architectural scale
- The rhythm of doors and windows
- The size, location, number, and materials of signage
- The type, materials, and character of the streetscape

In considering the appropriateness of alterations to existing buildings, the HZC shall be guided by the following principles:

- Avoid removing or altering original historic material or distinctive architectural features: if original and in good shape, it should not be removed or altered.
- Repair rather than replace wherever possible. If replacing, replicate the original based on existing materials. Do not invent something that "might have been."
- When extensive replacement is necessary for severely deteriorated material and replication to exactly match the original is not feasible, the new work should match the character of the original in terms of scale, texture, design, and composition.



- Do not try to make the building look older than it really is. Rehabilitation work should fit the character of the original building.
- The building may contain clues to guide decisions during rehabilitation. Original detailing may be covered with later materials or there may be physical evidence of what the original work was like and where it was located.
- A later addition to an old building, or a non-original facade or storefront may have gained significance over the years. Do not assume it is not historically significant just because it is not part of the original building.
- If no evidence of original materials or detailing exists, alterations should be simply detailed and new in design, yet fit the character of the building.

(2) Facades. Property owners shall preserve original facades, including windows, doors, transoms, and decorative architectural details by maintaining or restoring rather than replacing and base reproduction for replacement of missing elements on historic evidence such as photographs. If no evidence exists, property owners shall use similar examples from adjacent structures.

Original foundation materials and design shall not be concealed with concrete block, plywood panels, corrugated metal, or other non-original materials.

(3) Paint and paint colors. Unpainted masonry should be left unpainted. For other areas needing painting, acceptable paint colors are those listed in historic preservation literature.

(4) Screen and storm doors.

- Screen and storm doors shall be correctly sized to fit entrance openings. Door openings shall not be enlarged, reduced, or shortened for new door installation.
- New screen doors, in full-view, shall be wood or complementary materials. Structural members shall align with those of the original door.
- Rear and side entrances may be enhanced by adding simple signage, awnings, and lighting that is related to those of the front elevation. New windows and doors may be added when needed if in keeping with the size, design, materials, proportions, and location of the originals.

(5) Windows.

- Original windows shall be preserved in their original location, size, and design and with original materials and numbers of panes when available.
- Non-original windows shall not be added to primary facades or to secondary facades where readily visible.
- Windows of modern manufacturing are acceptable at the rear or sides of dwellings that are not readily visible from the street.
- Windows shall be repaired with materials to match the era. If repair is not feasible, replacement shall be with new windows to resemble the original in materials and dimensions.

- Decorative glass windows shall be similar to those in original location, in size, and design, and with their original materials and glass pattern and shall be repaired rather than replaced. If repair is not feasible, replacement shall be with new decorative glass windows to resemble the original in materials and dimensions. Consultation with a glass specialist is recommended when extensive repairs are needed.
  - Screens shall be correctly sized to fit the window opening including arched windows. Screens shall be wood or complementary materials and fit within frames, not overlap the frames. Screen window panels shall be full-view design or have the meeting rail match that of the window behind it.
  - Storm windows should be of wood or aesthetically complementary materials
  - Storm windows shall be sized and shaped to fit the window opening and shall be full-view design or with the central meeting rail at the same location as the historic window. Storm windows with built-in screens are acceptable. Interior storm windows are acceptable.
  - Window shutters that are original to the building shall be maintained, but shall not be added unless they are consistent with a historical look. Shutters shall be of louvered or paneled wood construction and shall fit the window opening so that if closed, they would cover the opening. Vinyl or aluminum construction shutters are not permissible unless they have dimensions and textures that are compatible with historic dwellings.
- (6) Porches.
- Porches on front and side facades shall be maintained in their original design and with original materials and detailing unless changes are approved by HZC.
  - Porches shall not be removed if original to the building.
  - Porches shall be repaired or replaced to match the original in design, materials, scale, and placement.
  - Porch staircases and steps original to a property shall be retained in their original location and configuration.
  - Porches on the fronts of buildings shall not be enclosed with wood, glass, or other materials that would alter the porch's open appearance.
  - Porches may be screened if the structural framework for the screen panels is minimal and the open appearance of the porch is maintained. Screen panels shall be placed behind the original features such as columns or railings. Screen panels shall not hide decorative details or result in the removal of original porch materials.
  - Porches with open areas in the foundation may be filled-in as traditional for the type and style of the house, or with decorative wood-framed skirting, vertical slats, or lattice panels.

- On front porches, columns and railings shall be consistent with historic designs in the district. Balusters and railings shall be appropriate for the building's style and period. Porch staircases and steps added to a building shall have posts, balusters, treads and risers to match original porch construction.
- (7) Roofs.
- Roofs shall be retained in their original shape and pitch with original features such as cresting, chimneys, finials, cupolas, etc.
  - Replacement gutters and downspouts shall not result in the removal of significant architectural features on the building. Gutters and downspouts of boxed or built-in type shall be repaired rather than replaced if possible.
  - Original roof materials such as metal shingles or metal sheet roofing shall be retained. Slate, asphalt, or fiberglass may be substituted if the original roof material is not available or economically feasible.
  - The color of new asphalt or fiberglass shingles shall be colors complementary to the historic district's time period.
  - Dormers, roof decks, balconies, or other additions shall not be added on fronts of dwellings, but may be added on the rear or sides of dwellings if not readily visible from the front.
- (8) Maintenance. In considering the appropriateness of alterations to existing buildings, the HZC requires specific methods of material maintenance:
- Never sandblast. Cleaning dirt or old paint from a building shall be done by the gentlest means possible. No method to clean the brick or masonry surface shall be used that destroys the outer patina or "crust" of the brick and exposes the soft inner core which can lead to deterioration. Low-pressure water, detergent, and natural bristle brushes are adequate.
  - Existing metal shall be maintained. If the metal needs to be stripped, use only a chemical paint remover designed, for that purpose, not dry grit blasting.
  - Preserve cast iron by maintaining and restoring original cast iron columns and pilasters. Original cast iron columns or pilasters shall not be concealed or obscured.
  - In general, do not seal historic brick and masonry.
  - Brick shall be clean and free of vines, ivy and other plant material.
  - Deeply recessed and crumbling mortar joints shall be re-pointed. Re-pointing masonry walls shall be done with a soft lime-based mortar mix rather than Portland cement. The mortar color, texture, type, and size of joint shall match the original.
  - When it is necessary to replace brick, it shall match the original in color and size. If mismatched brick is unavoidable, painting is acceptable.
  - Previously painted surfaces shall be repainted rather than chemically cleaned.

- Re-point mortar, if necessary, before repainting the brick.
- Wood siding shall match other historic homes in the district. If replacement is necessary, wood siding and shingles shall be replaced with new siding or shingles to match the original in size, placement, and design. Synthetic replacement materials such as vinyl, masonite, or aluminum are not acceptable. Siding shall not be of wood-based materials such as particleboard, gyp board, or pressboard.
- If possible, cracks in wood siding shall be repaired with appropriate material.
- Wood siding may be insulated if the addition of insulation does not result in alterations to the siding. Plugs or holes for blown-in insulation are not acceptable.
- Removal of asbestos siding shall follow hazardous material guidelines. (as added by Ord. #17-2015, Jan. 2016)

**14-1511. Design guidelines for new construction.** (1) Essential principles. The construction or erection of any structure within the district, including additions to existing buildings and new construction that utilizes existing party walls is subject to review by the Historic Zoning Commission (HZC) pursuant to the historic zoning ordinance. New construction shall compliment and harmonize with other buildings in the district and shall be consistent in terms of height, scale, rhythm, texture, and other design characteristics. Pre-fabricated structures are not allowed in the historic district unless a specific design is approved by the historic committee.

(2) New commercial buildings shall:

- Be compatible in height with adjacent buildings.
- Have exterior wall construction of materials consistent with those in the area.
- Be aligned with adjacent buildings along the street and conform to existing setbacks.
- Be of similar width and scale and have similar proportions as adjacent buildings.
- Be oriented toward the primary street on which it is sited.
- Have roof forms consistent with adjacent buildings.

(3) Commercial building additions.

- Are acceptable at the rear of buildings. Rear additions shall be compatible with the original building in scale, proportion, rhythm of openings, and size.
- Such as rooftop or additional stories shall not be constructed unless the addition will not be readily visible from the street or other pedestrian viewpoints. Roof additions shall be set back from the main facade.
- Shall be of exterior materials similar to the existing building.

- Shall be built as to result in minimal removal of original walls and details from the rear of the building and shall try to connect the addition with the original building through existing door or enlarged window openings.
- (4) Residential building additions shall:
- Be located at the rear of dwellings, not on the front or readily visible areas of the sides of dwellings.
- Be secondary (smaller and simpler) than the original dwelling in scale, design, and placement.
- Be of a compatible design in keeping with the original dwelling's design, roof shape, materials, color, and location of window, door, and cornice heights, etc.
- Not imitate an earlier historic style or architectural period.
- Be constructed to avoid extensive removal or loss of historic materials and to not damage or destroy significant original architectural features.
- Impact the exterior walls of the original dwelling as minimally as possible.

When building additions, existing door and window openings shall be used for connecting the addition to the dwelling.

(5) New primary residential buildings (principal structures).

- Shall maintain, not disrupt, the existing pattern of surrounding historic buildings along the street.
- Primary facades and main entrances shall be oriented toward the street in any new construction.
- Front and side yard setbacks shall match the block setbacks (see Planning and Zoning codes).
- Porches shall have roof forms of gable, hipped, or shed design and at least cover the entrance. Porches shall have columns and railings with balusters that are traditional in design and compatible with the overall character of the building.
- Window shape and proportions shall be historic in design.
- Wood construction is preferred for windows, but aesthetically complementary materials are acceptable when sized for historic window openings. Dark tinted windows, reflective glass and coatings for windows are not acceptable on front or readily visible sides of buildings.
- Height of foundations shall be similar to foundation heights in the area. Foundation heights may increase along the sides or at the rear of a building if necessary to follow slope contours.
- New construction shall continue the appearance of stone, brick, or cast concrete. Poured concrete, concrete block, and split-faced concrete are acceptable foundation materials. Stucco or other finishes may be required to provide a textured surface.
- Porch heights and depths shall be consistent with those of adjacent dwellings.

- New brick construction shall closely match typical mortar and brick color tones found in the Town of Cumberland Gap's historic dwellings. Artificial laminate type siding materials (e.g. artificial brick veneer, stone, etc.) are prohibited.
- The details and textures of building materials shall be applied in a manner consistent with traditional construction methods and compatible with surrounding structures.
- Replications are new buildings that closely imitate historic dwellings typically found in the locally designated districts. Replications are acceptable if they are consistent with historic dwellings in their overall form and plan, porch design and placement, window and door treatments, roof forms, and architectural details.
- (6) New secondary residential buildings (accessory structures).
- Garages, sheds and other outbuildings shall be smaller in scale than the dwelling.
- Outbuildings shall be simple in design but reflect the general character of the associated dwelling. For example, use gable roof forms if the dwelling has a gable roof; hipped roof forms if the dwelling has a hipped roof, etc.
- Outbuildings shall be built at traditional locations including at rear lot lines, adjacent to side streets, and at the rear of a dwelling.
- New secondary structures shall be compatible with the associated dwelling in design, shape, exterior materials, and roof shape. (as added by Ord. #17-2015, Jan. 2016)

**14-1512. Guidelines for streetscapes.** (1) Signs and graphics. Signs and graphics shall follow the provisions of the Town of Cumberland Gap's codes.

- Internally illuminated or neon signs are normally not acceptable.
- New signs shall be of traditional materials such as wood, glass, copper or bronze. Sandblasted and painted wood signs are appropriate.
- Signs shall not cover or obscure architectural features. Appropriate sign locations include upper facade walls, hanging or mounted inside windows, hanging or projecting from the face of the building with mounting brackets and hardware anchored into mortar.

(2) Driveways and parking lots. All driveways and parking lots, including landscaping shall comply with the Town of Cumberland Gap's codes. In the historic district:

- Driveways and parking lots shall not be sited in front yards. Parking lots shall be located in rear yards. If side yard or adjacent lot parking is required, the parking lot's edge landscape screening shall not extend past the front wall of adjacent buildings.
- Driveways in side yards should be of brick, gravel, concrete, textured asphalt, or concrete molded to look like period materials.

- The HZC requires that parking lots include a minimum of twenty percent (20%) green spaces and be screened with trees, shrubs, hedges, and/or fences at edges.
- (3) Sidewalks and walkways.
- Original sidewalks and walkways shall be preserved. Imitation of original or early sidewalks materials, details, dimensions, and placement is appropriate.
- Preexisting stone retaining walls shall be maintained, repaired or reconstructed.
- (4) Fences.
- Original cast or wrought iron fences shall be preserved. Iron fences may be added around late 19th and early 20th century structures.
- Hedges and shrubs are acceptable alternatives for fences.
- Chain link, louver, concrete block, shadowbox or stockade fences are not acceptable in front yards or visible side yards.
- Painted or stained wood picket, baluster, wrought iron, or similar historic material fences are appropriate.
- The HZC requires historical period fences, if fences are used.
- (5) Lighting.
- Original fixtures should be preserved, if possible.
- Light fixtures may be introduced to the exterior of a building when compatible in period, scale and style and mounted on porch ceilings or adjacent to entrances.
- Security lights shall be small, simple, and mounted on the rear or sides of buildings.
- Early American freestanding fixtures, based on traditional designs early, to mid- 20th century, are appropriate.
- (6) Utility and mechanical systems. HVAC units, dumpsters and large trash receptacles shall be located inconspicuously at the rear or sides of buildings. In new construction, wall or window air conditioning units, water, gas or electric meters, electric conduit and any other utility or mechanical systems shall not be located on front facades.
- (7) Solar panels. Solar panels, when used, shall be located on rear sections of the roof, behind dormers or gables or other areas not visible from the street. Freestanding solar panels shall be located at rear yards or on side facades not readily visible from the street. If side yard locations are readily visible, landscaping, fencing, or lattice panels shall effectively screen freestanding panels.
- (8) TV satellite dishes. Satellite dishes shall be located discretely and not visible from the front of the structure. (as added by Ord. #17-2015, Jan. 2016)

**14-1513. Building relocation.** Moving buildings into any locally designated district shall be acceptable if compatible with the district's architectural character through style, period, height, scale, materials, setting, and placement on the lot.

Moving existing buildings that contribute to the historic and architectural character of the districts shall be avoided unless demolition is the only other alternative. Moving outbuildings from one location to another on the same lot is acceptable if the relocation is approved by the HZC and meets zoning regulations. (as added by Ord. #17-2015, Jan. 2016)

**14-1514. Building demolition.** (1) Demolition shall be inappropriate under any of the following conditions:

- A building, object, or structure is of such architectural or historical interest and value that its removal would be detrimental to the public interest and the residents of town.
- The proposed reuse or new construction would diminish or detract from the predominant character of the district.
- A building, object, or structure is of such old, unusual, or uncommon design and materials that it could not be reproduced without great difficulty and expense.
- A proposed replacement or lack of replacement would make a less positive visual contribution to the district, would disrupt the character of the district, or would be visually incompatible.
- The demolition of a building, object, or structure would negatively impact the character, streetscape, or other buildings, objects, or structures in the district.

(2) Demolition shall be appropriate under any of the following conditions:

- The town, county, or state has ordered demolition for the public safety because of an unsafe or dangerous condition that constitutes an emergency.
- The demolition is required by a final and non-appealable order or ruling of a court, governmental body, or agency having appropriate jurisdiction, and such order or ruling does not allow for the restoration and continued use of the applicable building, object, or structure.
- A building, object, or structure that does not contribute or does not have the potential to contribute to the importance of the historic district may be removed.

(3) **Requirements for demolition.** A certificate of appropriateness as well as written permission by planning and zoning commission and board of mayor and alderman is required to demolish a structure in the historic district, whether the structure is classified as contributing or noncontributing. (as added by Ord. #17-2015, Jan. 2016)



**14-1515. Amendment.** Property owners within the community may recommend amendments to these guidelines to the HZC. (as added by Ord. #17-2015, Jan. 2016)

**14-1516. Enforcement.** Work performed without obtaining a COA, or in conflict of an approved COA is a violation of the town's zoning ordinance and is subject to a stop work order and/or a fifty dollar (\$50.00) fine. Each day's continuance of a violation is considered a separate offense. (as added by Ord. #17-2015, Jan. 2016)

**CHAPTER 16****AMENDMENT****SECTION**

14-1601. Amendment.

**14-1601. Amendment.** The regulations and the number, or boundaries of districts established by chapters 2 through 15 of this title may be amended, supplemented, changed, modified, or repealed by the Cumberland Gap Town Council; but, in accordance with the Tennessee enabling legislation, no amendment shall become effective unless it is first submitted to and approved by the Cumberland Gap Municipal Planning Commission, if disapproved, shall receive a majority vote of the entire membership of the Cumberland Gap Town Council. Before finally adopting any such amendment, the town council shall hold a public hearing thereon, at least fifteen (15) days notice of the time and place of hearing and which shall be given by at least one (1) publication in a newspaper of general circulation in the town; and any such amendment shall be published at least once in the official publication of the town or in a newspaper of general circulation in the town. (1979 Code, § 11-1401, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 *Ch7\_01-07-19*)

## CHAPTER 17

### BILLBOARDS

#### SECTION

14-1701. Definitions.

14-1702. New billboards prohibited in certain areas.

**14-1701. Definitions.** For the purposes of the interpretation and application of this chapter, the following terms shall have the meanings indicated:

(1) "Billboard" shall mean and include every sign of any kind not located upon the premises and that displays any announcement, declaration, demonstration, display, illumination or insignia used to advertise or promote the interests of any person when the same is placed out of doors in view of the general public, or an on premises sign greater than 100 square feet in display service area.

(2) "Display service area" shall mean the net geometric area enclosed by the display surface (sign face) of the billboard and/or including the outer extremities of all letters, characters, and delineations. The display service area shall not include structural supports.

(3) "On premises sign" shall mean a sign relating in its subject matter to the premises on which it is located and/or to products, accommodations, services, or activities on the premises.

(4) "Off premises sign" shall mean a sign that is not located on the premises.

(5) "Premises" shall mean the entire, single parcel of property upon which the sign is located, including the principal building or buildings, and all other buildings and other structures of every kind and description. In the case of malls, shopping centers, and multi-tenant buildings, the premises for each of the various businesses or functions is limited to the space occupied or directly connected to and associated with that particular business or function, exclusive of the common areas.

(6) "Person" shall mean and include any person, firm, partnership, association, corporation, company or organization of every kind and description. (Ord. #\_\_\_, June 1995, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013)

**14-1702. New billboards prohibited in certain areas.** Subsequent to the effective date of the ordinance comprising this chapter, no new billboard shall be built within the following described area: Any property on or adjacent to U.S. Highway 25E (Cumberland Gap Parkway) U.S. Highway 58 located in the town limits of the Town of Cumberland Gap, Tennessee. (Ord. #\_\_\_, June

1995, as renumbered by Ord. #9-2005, Oct. 2005, and Ord. #10-2013, Dec. 2013, and amended by Ord. #6-2018, Dec. 2018 **Ch7\_01-07-19**)

**CHAPTER 18****FLOOD DAMAGE PREVENTION ORDINANCE****SECTION**

- 14-1801. Statutory authorization, findings of fact, purpose and objectives.
- 14-1802. Definitions.
- 14-1803. General provisions.
- 14-1804. Administration.
- 14-1805. Provisions for flood hazard reduction.
- 14-1806. Variance procedures.
- 14-1807. Legal status provisions.

**14-1801. Statutory authorization, findings of fact, purpose and objectives.** (1) Statutory authorization. The Legislature of the State of Tennessee has in Private Act Charter Chapter 210 of the Acts of 1907, delegated the responsibility to units of local government to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Town Of Cumberland Gap, Tennessee, Mayor and its Legislative Body do ordain as follows:

(2) Findings of fact. (a) The Town of Cumberland Gap, Tennessee, Mayor and its Legislative Body wishes to maintain eligibility in the National Flood Insurance Program (NFIP) and in order to do so must meet the NFIP regulations found in title 44 of the Code of Federal Regulations (C.F.R.), ch. 1, section 60.3.

(b) Areas of the Town of Cumberland Gap, Tennessee are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(c) Flood losses are caused by the cumulative effect of obstructions in floodplains, causing increases in flood heights and velocities; by uses in flood hazard areas which are vulnerable to floods; or construction which is inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

(3) Statement of purpose. It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas. This ordinance is designed to:

(a) Restrict or prohibit uses which are vulnerable to flooding or erosion hazards, or which result in damaging increases in erosion, flood heights, or velocities;

(b) Require that uses vulnerable to floods, including community facilities, be protected against flood damage at the time of initial construction;

(c) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;

(d) Control filling, grading, dredging and other development which may increase flood damage or erosion;

(e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(4) Objectives. The objectives of this ordinance are:

(a) To protect human life, health, safety and property;

(b) To minimize expenditure of public funds for costly flood control projects;

(c) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(d) To minimize prolonged business interruptions;

(e) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodprone areas;

(f) To help maintain a stable tax base by providing for the sound use and development of floodprone areas to minimize blight in flood areas;

(g) To ensure that potential homebuyers are notified that property is in a floodprone area;

(h) To maintain eligibility for participation in the NFIP. (as added by Ord. #2-2009, July 2009, and renumbered by Ord. #10-2013, Dec. 2013)

**14-1802. Definitions.** Unless specifically defined below, words or phrases used in this ordinance shall be interpreted as to give them the meaning they have in common usage and to give this ordinance its most reasonable application given its stated purpose and objectives.

(1) "Accessory structure" means a subordinate structure to the principal structure on the same lot and, for the purpose of this ordinance, shall conform to the following:

(a) Accessory structures shall only be used for parking of vehicles and storage.

(b) Accessory structures shall be designed to have low flood damage potential.

(c) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

(d) Accessory structures shall be firmly anchored to prevent flotation, collapse, and lateral movement, which otherwise may result in damage to other structures.

(e) Utilities and service facilities such as electrical and heating equipment shall be elevated or otherwise protected from intrusion of floodwaters.

(2) "Addition (to an existing building)" means any walled and roofed expansion to the perimeter or height of a building.

(3) "Appeal" means a request for a review of the local enforcement officer's interpretation of any provision of this ordinance or a request for a variance.

(4) "Area of shallow flooding" means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with one percent (1%) or greater annual chance of flooding to an average depth of one to three feet (1' – 3') where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate; and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(5) "Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

(6) "Area of special flood hazard" see "special flood hazard area."

(7) "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. This term is also referred to as the 100-year flood or the one percent (1%) annual chance flood.

(8) "Basement" means any portion of a building having its floor subgrade (below ground level) on all sides.

(9) "Building" see "structure."

(10) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of equipment or materials.

(11) "Elevated building" means a non-basement building built to have the lowest floor of the lowest enclosed area elevated above the ground level by means of solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwater, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event.

(12) "Emergency flood insurance program" or "emergency program" means the program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

(13) "Erosion" means the process of the gradual wearing away of land masses. This peril is not "per se" covered under the program.

(14) "Exception" means a waiver from the provisions of this ordinance which relieves the applicant from the requirements of a rule, regulation, order or other determination made or issued pursuant to this ordinance.

(15) "Existing construction" means any structure for which the "start of construction" commenced before the effective date of the initial floodplain management code or ordinance adopted by the community as a basis for that community's participation in the NFIP.

(16) "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the NFIP.

(17) "Existing structures" see "existing construction."

(18) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

(19) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

(20) "Flood elevation determination" means a determination by the Federal Emergency Management Agency (FEMA) of the water surface elevations of the base flood, that is, the flood level that has a one percent (1%) or greater chance of occurrence in any given year.

(21) "Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) or flood-related erosion hazards.

(22) "Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by FEMA, where the boundaries of areas of special flood hazard have been designated as Zone A.



(23) "Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by FEMA, delineating the areas of special flood hazard or the risk premium zones applicable to the community.

(24) "Flood insurance study" is the official report provided by FEMA, evaluating flood hazards and containing flood profiles and water surface elevation of the base flood.

(25) "Floodplain" or "floodprone area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").

(26) "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

(27) "Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

(28) "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities and structures and their contents.

(29) "Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

(30) "Flood-related erosion area" or "flood-related erosion prone area" means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

(31) "Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works and floodplain management regulations.

(32) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base

flood without cumulatively increasing the water surface elevation more than a designated height.

(33) "Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, and the hydrological effect of urbanization of the watershed.

(34) "Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

(35) "Highest adjacent grade" means the highest natural elevation of the ground surface, prior to construction, adjacent to the proposed walls of a structure.

(36) "Historic structure" means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on the Tennessee inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on the Town of Cumberland Gap, Tennessee inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:

(i) By the approved Tennessee program as determined by the Secretary of the Interior; or

(ii) Directly by the Secretary of the Interior.

(37) "Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

(38) "Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage

devices, which are constructed and operated in accordance with sound engineering practices.

(39) "Lowest floor" means the lowest floor of the lowest enclosed area, including a basement. An unfinished or flood resistant enclosure used solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

(40) "Manufactured home" means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

(41) "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

(42) "Map" means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by FEMA.

(43) "Mean sea level" means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For the purposes of this ordinance, the term is synonymous with the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

(44) "National Geodetic Vertical Datum (NGVD)" means, as corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

(45) "New construction" means any structure for which the "start of construction" commenced on or after the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structure.

(46) "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this ordinance or the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structure.

(47) "North American Vertical Datum (NAVD)" means, as corrected in 1988, a vertical control used as a reference for establishing varying elevations within the floodplain.

(48) "100-year flood" see "base flood."

(49) "Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

(50) "Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed structures.

(51) "Recreational vehicle" means a vehicle which is:

- (a) Built on a single chassis;
- (b) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(52) "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

(53) "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

(54) "Special flood hazard area" is the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE or A99.

(55) "Special hazard area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, or AH.

(56) "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; and includes the placement of a manufactured home on a foundation. Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as

garages or sheds, not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(57) "State coordinating agency." The Tennessee Department of Economic and Community Development's Local Planning Assistance Office, as designated by the Governor of the State of Tennessee at the request of FEMA to assist in the implementation of the NFIP for the state.

(58) "Structure," for purposes of this ordinance, means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

(59) "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

(60) "Substantial improvement" means any reconstruction, rehabilitation, addition, alteration or other improvement of a structure in which the cost equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the initial improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The market value of the structure should be:

(a) The appraised value of the structure prior to the start of the initial improvement; or

(b) In the case of substantial damage, the value of the structure prior to the damage occurring.

The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been pre-identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions and not solely triggered by an improvement or repair project; or

(b) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

(61) "Substantially improved existing manufactured home parks or subdivisions" is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds fifty percent (50%) of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

(62) "Variance" is a grant of relief from the requirements of this ordinance.

(63) "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

(64) "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains of riverine areas. (as added by Ord. #2-2009, July 2009, and renumbered by Ord. #10-2013, Dec. 2013)

**14-1803. General provisions.** (1) Application. This ordinance shall apply to all areas within the incorporated area of the Town of Cumberland Gap, Tennessee.

(2) Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified on the Town of Cumberland Gap, Tennessee, as identified by FEMA, and in its Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), Community Panel Number 47025C0100D, dated September 25, 2009, along with all supporting technical data, are adopted by reference and declared to be a part of this ordinance.

(3) Requirement for development permit. A development permit shall be required in conformity with this ordinance prior to the commencement of any development activities.

(4) Compliance. No land, structure or use shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

(5) Abrogation and greater restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants or deed restrictions. However, where this ordinance conflicts or overlaps with another regulatory instrument, whichever imposes the more stringent restrictions shall prevail.

(6) Interpretation. In the interpretation and application of this ordinance, all provisions shall be:

(a) Considered as minimum requirements;

(b) Liberally construed in favor of the governing body; and

(c) Deemed neither to limit nor repeal any other powers granted under Tennessee statutes.

(7) Warning and disclaimer of liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or

natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Cumberland Gap, Tennessee or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(8) Penalties for violation. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance shall constitute a misdemeanor punishable as other misdemeanors as provided by law. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon adjudication therefore, be fined as prescribed by Tennessee statutes, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Cumberland Gap, Tennessee from taking such other lawful actions to prevent or remedy any violation. (as added by Ord. #2-2009, July 2009, and renumbered by Ord. #10-2013, Dec. 2013)

**14-1804. Administration.** (1) Designation of ordinance administrator. The building inspector is hereby appointed as the administrator to implement the provisions of this ordinance.

(2) Permit procedures. Application for a development permit shall be made to the administrator on forms furnished by the community prior to any development activities. The development permit may include, but is not limited to the following: plans in duplicate drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities. Specifically, the following information is required:

(a) Application stage. (i) Elevation in relation to mean sea level of the proposed lowest floor, including basement, of all buildings where base flood elevations are available, or to certain height above the highest adjacent grade when applicable under this ordinance.

(ii) Elevation in relation to mean sea level to which any non-residential building will be floodproofed where base flood elevations are available, or to certain height above the highest adjacent grade when applicable under this ordinance.

(iii) A FEMA floodproofing certificate from a Tennessee registered professional engineer or architect that the proposed non-residential floodproofed building will meet the floodproofing criteria in § 14-1805(1) and (2).

(iv) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(b) Construction stage. Within AE Zones, where base flood elevation data is available, any lowest floor certification made relative to mean sea level shall be prepared by or under the direct supervision of a Tennessee registered land surveyor and certified by same. The administrator shall record the elevation of the lowest floor on the development permit. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a Tennessee registered professional engineer or architect and certified by same.

Within approximate A Zones, where base flood elevation data is not available, the elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest adjacent grade. The administrator shall record the elevation of the lowest floor on the development permit. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a Tennessee registered professional engineer or architect and certified by same.

For all new construction and substantial improvements, the permit holder shall provide to the administrator an as-built certification of the lowest floor elevation or floodproofing level upon the completion of the lowest floor or floodproofing.

Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The administrator shall review the above-referenced certification data. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed to proceed. Failure to submit the certification or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

(3) Duties and responsibilities of the administrator. Duties of the administrator shall include, but not be limited to, the following:

(a) Review all development permits to assure that the permit requirements of this ordinance have been satisfied, and that proposed building sites will be reasonably safe from flooding.

(b) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(c) Notify adjacent communities and the Tennessee Department of Economic and Community Development Local Planning Assistance



Office, prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA.

(d) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to FEMA to ensure accuracy of community FIRMs through the letter of map revision process.

(e) Assure that the flood carrying capacity within an altered or relocated portion of any watercourse is maintained.

(f) Record the elevation, in relation to mean sea level or the highest adjacent grade, where applicable, of the lowest floor (including basement) of all new and substantially improved buildings, in accordance with § 14-1804(2).

(g) Record the actual elevation, in relation to mean sea level or the highest adjacent grade, where applicable to which the new and substantially improved buildings have been floodproofed, in accordance with § 14-1804(2).

(h) When floodproofing is utilized for a nonresidential structure, obtain certification of design criteria from a Tennessee registered professional engineer or architect, in accordance with § 14-1804(2).

(i) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance.

(j) When base flood elevation data and floodway data have not been provided by FEMA, obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other sources, including data developed as a result of these regulations, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the Town of Cumberland Gap, Tennessee FIRM meet the requirements of this ordinance.

(k) Maintain all records pertaining to the provisions of this ordinance in the office of the administrator and shall be open for public inspection. Permits issued under the provisions of this ordinance shall be maintained in a separate file or marked for expedited retrieval within combined files. (as added by Ord. #2-2009, July 2009, and renumbered by Ord. #10-2013, Dec. 2013)

**14-1805. Provisions for flood hazard reduction.** (1) General standards. In all areas of special flood hazard, the following provisions are required:

(a) New construction and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure;

(b) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State of Tennessee and local anchoring requirements for resisting wind forces;

(c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(d) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;

(e) All electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;

(h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;

(i) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance;

(j) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provision of this ordinance, shall be undertaken only if said non-conformity is not further extended or replaced;

(k) All new construction and substantial improvement proposals shall provide copies of all necessary federal and state permits, including section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334;

(l) All subdivision proposals and other proposed new development proposals shall meet the standards of § 14-1805(2);

(m) When proposed new construction and substantial improvements are partially located in an area of special flood hazard, the entire structure shall meet the standards for new construction;

(n) When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure shall meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.

(2) Specific standards. In all areas of special flood hazard, the following provisions, in addition to those set forth in § 14-1805(1), are required:

(a) Residential structures. In AE Zones where base flood elevation data is available, new construction and substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than one foot (1') above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Within approximate A Zones where base flood elevations have not been established and where alternative data is not available, the administrator shall require the lowest floor of a building to be elevated to a level of at least three feet (3') above the highest adjacent grade (as defined in § 14-1802). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

(b) Non-residential structures. In AE Zones, where base flood elevation data is available, new construction and substantial improvement of any commercial, industrial, or non-residential building, shall have the lowest floor, including basement, elevated or floodproofed to no lower than one foot (1') above the level of the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

In approximate A Zones, where base flood elevations have not been established and where alternative data is not available, new construction and substantial improvement of any commercial, industrial, or non-residential building, shall have the lowest floor, including basement, elevated or floodproofed to no lower than three feet (3') above the highest adjacent grade (as defined in § 14-1802). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to

facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Non-residential buildings located in all A Zones may be floodproofed, in lieu of being elevated, provided that all areas of the building below the required elevation are watertight, with walls substantially impermeable to the passage of water, and are built with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A Tennessee registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the administrator as set forth in § 14-1804(2).

(c) Enclosures. All new construction and substantial improvements that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor that are subject to flooding, shall be designed to preclude finished living space and designed to allow for the entry and exit of flood waters to automatically equalize hydrostatic flood forces on exterior walls.

(i) Designs for complying with this requirement must either be certified by a Tennessee professional engineer or architect or meet or exceed the following minimum criteria.

(A) Provide a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;

(B) The bottom of all openings shall be no higher than one foot (1') above the finished grade;

(C) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(ii) The enclosed area shall be the minimum necessary to allow for parking of vehicles, storage or building access.

(iii) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms in such a way as to impede the movement of floodwaters and all such partitions shall comply with the provisions of § 14-1805(2).

(d) Standards for manufactured homes and recreational vehicles.

(i) All manufactured homes placed, or substantially improved, on:

(A) Individual lots or parcels;

(B) In expansions to existing manufactured home parks or subdivisions; or

(C) In new or substantially improved manufactured home parks or subdivisions, must meet all the requirements of new construction.

(ii) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that either:

(A) In AE Zones, with base flood elevations, the lowest floor of the manufactured home is elevated on a permanent foundation to no lower than one foot (1') above the level of the base flood elevation; or

(B) In approximate A Zones, without base flood elevations, the manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least equivalent strength) that are at least three feet (3') in height above the highest adjacent grade (as defined in § 14-1802).

(iii) Any manufactured home, which has incurred "substantial damage" as the result of a flood, must meet the standards of § 14-1805(1) and (2).

(iv) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(v) All recreational vehicles placed in an identified special flood hazard area must either:

(A) Be on the site for fewer than one hundred eighty (180) consecutive days;

(B) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions); or

(C) The recreational vehicle must meet all the requirements for new construction.

(e) Standards for subdivisions and other proposed new development proposals. Subdivisions and other proposed new developments, including manufactured home parks, shall be reviewed to determine whether such proposals will be reasonably safe from flooding.

(i) All subdivision and other proposed new development proposals shall be consistent with the need to minimize flood damage.

(ii) All subdivision and other proposed new development proposals shall have public utilities and facilities such as sewer,

gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(iii) All subdivision and other proposed new development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(iv) In all approximate A Zones require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser, include within such proposals base flood elevation data (see § 14-1805(5)).

(3) Standards for special flood hazard areas with established base flood elevations and with floodways designated. Located within the special flood hazard areas established in § 14-1803(2), are areas designated as floodways. A floodway may be an extremely hazardous area due to the velocity of floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights and velocities. Therefore, the following provisions shall apply:

(a) Encroachments are prohibited, including earthen fill material, new construction, substantial improvements or other development within the regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the cumulative effect of the proposed encroachments or new development shall not result in any increase in the water surface elevation of the base flood elevation, velocities, or floodway widths during the occurrence of a base flood discharge at any point within the community. A Tennessee registered professional engineer must provide supporting technical data, using the same methodologies as in the effective flood insurance study for Town of Cumberland Gap, Tennessee and certification, thereof.

(b) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-1805(1) and (2).

(4) Standards for areas of special flood hazard Zones AE with established base flood elevations but without floodways designated. Located within the special flood hazard areas established in § 14-1803(2), where streams exist with base flood data provided but where no floodways have been designated (Zones AE), the following provisions apply:

(a) No encroachments, including fill material, new construction and substantial improvements shall be located within areas of special flood hazard, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the

proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(b) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-1805(1) and (2).

(5) Standards for streams without established base flood elevations and floodways (A Zones). Located within the special flood hazard areas established in § 14-1803(2), where streams exist, but no base flood data has been provided and where a floodway has not been delineated, the following provisions shall apply:

(a) The administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any federal, state, or other sources, including data developed as a result of these regulations (see (b) below), as criteria for requiring that new construction, substantial improvements, or other development in approximate A Zones meet the requirements of § 14-1805(1) and (2).

(b) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser, include within such proposals base flood elevation data.

(c) Within approximate A Zones, where base flood elevations have not been established and where such data is not available from other sources, require the lowest floor of a building to be elevated or floodproofed to a level of at least three feet (3') above the highest adjacent grade (as defined in § 14-1802). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in § 14-1804(2). Openings sufficient to facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with the standards of § 14-1805(2).

(d) Within approximate A Zones, where base flood elevations have not been established and where such data is not available from other sources, no encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty feet (20'), whichever is greater, measured from the top of the stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the Town of Cumberland

Gap, Tennessee. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(e) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-1805(1) and (2). Within approximate A Zones, require that those subsections of § 14-1805(2) dealing with the alteration or relocation of a watercourse, assuring watercourse carrying capacities are maintained and manufactured homes provisions are complied with as required.

(6) Standards for areas of shallow flooding (AO and AH Zones). Located within the special flood hazard areas established in § 14-1803(2) are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet (1 – 3') where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions, in addition to those set forth in § 14-1805(1) and (2), apply:

(a) All new construction and substantial improvements of residential and non-residential buildings shall have the lowest floor, including basement, elevated to at least one foot (1') above as many feet as the depth number specified on the FIRMs, in feet, above the highest adjacent grade. If no flood depth number is specified on the FIRM, the lowest floor, including basement, shall be elevated to at least three feet (3') above the highest adjacent grade. Openings sufficient to facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with standards of § 14-1805(2).

(b) All new construction and substantial improvements of non-residential buildings may be floodproofed in lieu of elevation. The structure together with attendant utility and sanitary facilities must be floodproofed and designed watertight to be completely floodproofed to at least one foot (1') above the flood depth number specified on the FIRM, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If no depth number is specified on the FIRM, the structure shall be floodproofed to at least three feet (3') above the highest adjacent grade. A Tennessee registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this ordinance and shall provide such certification to the administrator as set forth above and as required in accordance with § 14-1804(2).

(c) Adequate drainage paths shall be provided around slopes to guide floodwaters around and away from proposed structures.



(7) Standards for areas protected by flood protection system (A-99 Zones). Located within the areas of special flood hazard established in § 14-1803(2) are areas of the 100-year floodplain protected by a flood protection system but where base flood elevations have not been determined. Within these areas (A-99 Zones) all provisions of §§ 14-1804 and 14-1805 shall apply.

(8) Standards for unmapped streams. Located within the Town of Cumberland Gap, Tennessee, are unmapped streams where areas of special flood hazard are neither indicated nor identified. Adjacent to such streams, the following provisions shall apply:

(a) No encroachments including fill material or other development including structures shall be located within an area of at least equal to twice the width of the stream, measured from the top of each stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1') at any point within the locality.

(b) When a new flood hazard risk zone, and base flood elevation and floodway data is available, new construction and substantial improvements shall meet the standards established in accordance with §§ 14-1804 and 14-1805. (as added by Ord. #2-2009, July 2009, and renumbered by Ord. #10-2013, Dec. 2013)

**14-1806. Variance procedures.** (1) Board of floodplain review.

(a) Creation and appointment. A board of floodplain review is hereby established which shall consist of three (3) members appointed by the chief executive officer. The term of membership shall be four (4) years except that the initial individual appointments to the board of floodplain review shall be terms of one (1), two (2), and three (3) years, respectively. Vacancies shall be filled for any unexpired term by the chief executive officer.

(b) Procedure. Meetings of the board of floodplain review shall be held at such times, as the board shall determine. All meetings of the board of floodplain review shall be open to the public. The board of floodplain review shall adopt rules of procedure and shall keep records of applications and actions thereof, which shall be a public record. Compensation of the members of the board of floodplain review shall be set by the legislative body.

(c) Appeals: how taken. An appeal to the board of floodplain review may be taken by any person, firm or corporation aggrieved or by any governmental officer, department, or bureau affected by any decision of the administrator based in whole or in part upon the provisions of this

ordinance. Such appeal shall be taken by filing with the board of floodplain review a notice of appeal, specifying the grounds thereof. In all cases where an appeal is made by a property owner or other interested party, a fee of \_\_\_\_\_ dollars for the cost of publishing a notice of such hearings shall be paid by the appellant. The administrator shall transmit to the board of floodplain review all papers constituting the record upon which the appeal action was taken. The board of floodplain review shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to parties in interest and decide the same within a reasonable time which shall not be more than forty-five (45) days from the date of the hearing. At the hearing, any person or party may appear and be heard in person or by agent or by attorney.

(d) Powers. The board of floodplain review shall have the following powers:

(i) Administrative review. To hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, permit, decision, determination, or refusal made by the administrator or other administrative official in carrying out or enforcement of any provisions of this ordinance.

(ii) Variance procedures. In the case of a request for a variance the following shall apply:

(A) The Town of Cumberland Gap, Tennessee Board of Floodplain Review shall hear and decide appeals and requests for variances from the requirements of this ordinance.

(B) Variances may be issued for the repair or rehabilitation of historic structures as defined, herein, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary deviation from the requirements of this ordinance to preserve the historic character and design of the structure.

(C) In passing upon such applications, the board of floodplain review shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

(1) The danger that materials may be swept onto other property to the injury of others;

(2) The danger to life and property due to flooding or erosion;

(3) The susceptibility of the proposed facility and its contents to flood damage;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity of the facility to a waterfront location, in the case of a functionally dependent use;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(8) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(9) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

(10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, and streets and bridges.

(D) Upon consideration of the factors listed above, and the purposes of this ordinance, the board of floodplain review may attach such conditions to the granting of variances, as it deems necessary to effectuate the purposes of this ordinance.

(E) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(2) Conditions for variances. (a) Variances shall be issued upon a determination that the variance is the minimum relief necessary, considering the flood hazard and the factors listed in § 14-1806(1).

(b) Variances shall only be issued upon: a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship; or a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(c) Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for

flood insurance (as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) coverage, and that such construction below the base flood elevation increases risks to life and property.

(d) The administrator shall maintain the records of all appeal actions and report any variances to FEMA upon request. (as added by Ord. #2-2009, July 2009, and renumbered by Ord. #10-2013, Dec. 2013)

**14-1807. Legal status provisions.** (1) Conflict with other ordinances. In case of conflict between this ordinance or any part thereof, and the whole or part of any existing or future ordinance of the Town of Cumberland Gap, Tennessee, the most restrictive shall in all cases apply.

(2) Severability. If any section, clause, provision, or portion of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, provision, or portion of this ordinance which is not of itself invalid or unconstitutional.

(3) Effective date. The ordinance comprising this chapter shall become effective immediately after its passage, in accordance with the Charter of the Town of Cumberland Gap, Tennessee, and the public welfare demanding it. (as added by Ord. #2-2009, July 2009, and renumbered by Ord. #10-2013, Dec. 2013)